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Supreme Court of the United States

[redacted]

No. 116

[redacted]

IRON GRAYSON, MICKEY KEYS, PAULINA CARDENAS, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES A. HARRIS, WILLIAM H. HARRIS, JAMES E. KENNEDY, ET AL.

[redacted]

[redacted]

[redacted]

(22,304)

(33,394)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 116

ISOM GRAYSON, MICEY KEYS, PAULINA CAROLINA, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES A. HARRIS, WILLIAM H. HARRIS, JAMES H. KENNEDY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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[fol. 1]

IN DISTRICT COURT OF CREEK COUNTY

No. 6332

Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor; Zack Grayson, a minor, by Mont Carolina, the next friend of said minors; Delilah Hutton, Sam Haynes, Alice Hunter, Rose Haynes, Rayford Hutton, Sam Stidham, Letha Stehham, Hattie Givens, George Harrison, Jennie Boyce, a minor; Clarence Boyce, a minor; Lucy Boyce, a minor; Hattie Boyce, a minor; Beatrice Boyce, a minor, by George Harrison, the next friend of said minors; Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, née Nevins; Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jessie Lewis, Elmore Lewis, a minor; Robert Lewis, a minor; William Lewis, Jr., a minor; Lennie Lewis, a minor, by R. J. Dixon, the next friend of said minors; Mary Manuel, Roy McIntosh, Roxyann McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor; Jack Watley, a minor; Beatrice Watley, a minor; Myrtle Watley, a minor, by Jim Watley, the next friend of said minors; Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey Grayson, Cooper Grayson, a minor, by Billy Grayson, his next friend; Elsie Edwards, Sam Tobler, Dick Tobler, Roxanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor; Lula Tobler, a minor; Pleas Tobler, a minor; Ida Tobler, a minor, by Lewis Adams, the next friend of said minors; Mariah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe Hawkins, Sambo Hawkins, Dave Hawkins, Robert Haw-
[fol. 2] kins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her

next friend, P. J. Shinn; Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Perry, Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phoebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell, a minor; Percilla Murrell, a minor; Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors; Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgie Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor; Annie Davis, a minor, by J. M. Glass, the next friend of said minors; Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Harry Brown, John Brown, Paul Brown, Rose Mannels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mima Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones, Alice Jones, Plaintiffs,

vs.

James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Brann, Dixie Q. Brown, Jim Colbert, and Warlacy, Defendants.

Petition—Filed Aug. 4, 1917

First

The plaintiffs state that they and each of them, are citizens of the Creek Nation and members of the Creek Tribe of Indians; that they are the owners in fee, each, of an undivided interest and portion of the lands hereinafter described, in the proportions hereinafter set forth, and that they derived their title thereto as hereinafter stated to wit:

The plaintiffs state that Nancy Colbert, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5641; that Louisa Colbert, deceased, was a Creek [fol. 3] Freedman, a citizen of the Creek Nation and duly enrolled as such on the Approved Creek Freedman roll under No. 5639; that Garfield Colbert, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5640; that Gertrude Grayson, deceased, was a

Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such, on the Approved Creek Freedman roll under No. 5684; that Jim Colbert is a Creek Freedman, a citizen of the Creek Nation and duly enrolled as such on said roll under No. 2645.

The plaintiffs further state that the said Nancy Colbert, died intestate, without issue and never having been married, about March 1st, 1900, leaving her surviving, Jim Colbert, her father, and the said Louisa Colbert, since deceased, her mother; that the said Louisa Colbert died intestate about March 7th, 1900, leaving her surviving Jim Colbert, her husband, Garfield Colbert, since deceased, her son, and the said Gertrude Grayson, since deceased, her daughter, and no other descendants.

That the said Garfield Colbert died intestate, without issue and never having been married, in the month of June, 1900, leaving him surviving Jim Colbert, his father, and the said Gertrude Grayson, since deceased, his half sister, and no other brothers or sisters nor children of deceased brothers and sisters.

The plaintiffs further state that on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Nancy Colbert to her Creek heirs, as the proportional share of the lands of the Creek Nation to which she would have been entitled if living, the following described lands to wit:

Lot Two, and the Northeast quarter of the Northeast quarter, and the Northwest quarter of the Northwest quarter of the Southeast quarter of the Northeast quarter of Section Thirty-one, in Township Seventeen, north, of [fol. 4] Range Twelve, east, and the Northwest quarter of the Southwest quarter of Section Seventeen, and the East Half of the Southeast quarter of the Southeast quarter, and the Northwest quarter of the Southeast quarter of the Southeast quarter, and the East Half of the Southwest quarter of Southeast quarter of the Southeast quarter, and the Northwest quarter of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section Twenty, all in Township Eighteen, North, of Range Twelve East, and all in Creek County, Oklahoma. A copy of the certificate of which allotment is hereto attached marked "Exhibit A" and made a part hereof.

That on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Garfield Colbert, to his Creek heirs, as the proportional share of the lands of the Creek Nation to which he would have been entitled if living the following described lands, to wit:

The Southwest quarter of the Northeast quarter and the Southwest quarter of the Northwest quarter of Section Twenty-nine, and the North half of the Northeast quarter of Section Thirty, all in Township Eighteen, North of Range Twelve, East, in Creek County, Okla. A copy of the certificate of which allotment is hereto attached, marked "Exhibit B," and made a part hereof.

The plaintiffs further state that upon the allotment of the above described lands the said Gertrude Grayson, since deceased, and Jim Colbert, as the only surviving Creek heirs at law of the said Nancy Colbert and Garfield Colbert, became the owners in fee, each, of an undivided one-half of said allotments of lands, and became vested of the full legal and equitable title thereto as tenants in common.

The plaintiffs further state that the said Gertrude Grayson, deceased, was the illegitimate daughter of the said Louisa Colbert deceased, her putative father being John Foster, a non-citizen of the Creek Nation and not a Creek descendant. That George Tobler, deceased, was the father [fol. 5] of the said Louisa Colbert, deceased, and that Cloria Grayson, also known as Cloria Ross, is the mother of said Louisa Colbert; that the said George Tobler was a Creek Freedman and a citizen of the Creek Nation; that the said Cloria Grayson is a non-citizen of the Creek Nation and is not a Creek descendant.

The plaintiff further states that the said George Tobler died about the year 1880, leaving him surviving his daughter Louisa Colbert, and his wife Cloria Grayson herein before mentioned and no other descendants nor father or mother. That the said George Tobler had the following brothers and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoebe Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham, Jim Boy Tobler and Dinah Grayson all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of

whom are now dead except Micy Keys, that all of the said deceased brothers and sisters of the said George Tobler, left surviving them Creek descendants who are hereinafter named and are all related to them and to the said George Tobler as hereinafter set forth.

The plaintiffs further state that the said Gertrude Grayson died, intestate, without issue and never having been married on the —— day of April, 1907, in which is now Mayes County, Okla., possessed in fee of an undivided one-half of the lands herein before described and leaving her surviving as her only Creek heirs at law, the said Micy Keys and the persons hereinafter named as the surviving descendants of the above named deceased brothers and sisters of the said George Tobler, deceased, and that upon the death of the said Gertrude Grayson as her Creek heir at law, the said Micy Keys and the surviving descendants hereinafter named of the brothers and sisters of the said George Tobler, deceased, became the owners in fee of the lands by her possessed as hereinbefore set forth.

The plaintiffs further state that the undivided one-half of the land above described of which the said Gertrude Grayson died possessed as hereinbefore set forth, upon her death became vested in fee in the surviving Creek [fol. 6] heirs of the said Gertrude Grayson in the proportions and parts hereinafter set forth.

The said surviving Creek heirs of the said Gertrude Grayson, deceased, and their kinship and the proportional shares of each as such heirs in the undivided one half of the lands herein described are as follows, to wit:

1. Micy Keys, who is a sister of the said George Tobler, deceased, who was the father of the said Louisa Colbert, deceased, who was the mother of the said Gertrude Grayson, deceased, a 1/10 part.

(Decendants of Bucher Grayson)

2. Isom Grayson, who was son of Bucher Grayson, deceased, who was a brother of the said George Tobler, deceased, a 1/30 part.

The following named children of Ceaser Grayson, deceased, who was a son of the said Bucher Grayson, deceased, to wit:

3. Paulina Carolina, a 1/240 part.

4. Alice Carolina, a 1/240 part.

5. Bertha Grayson a 1/240 part.
6. Gertie Carolina a 1/240 part.
7. Polly Grayson a 1/240 part.
8. Louisa Williams a 1/240 part.
9. Dock Grayson a 1/240 part.

The only son of Zack Grayson, deceased, who was a son of the said Ceaser Grayson, deceased, to wit:

10. Zack Grayson, a 1/240 part.

The following named children of Louisa Haynes, deceased, who was a daughter of the said Butcher Grayson, deceased, to wit:

11. Delilah Hutton, a 1/180 part.
12. Sam Haynes a 1/180 part.

[fol. 7] 13. Alice Hunter a 1/180 part.

14. Rose Haynes a 1/180 part.
15. Rayford Hutton a 1/180 part.

The following named children of Adiline Stidham, deceased, who was a daughter of the said Louisa Haynes, deceased, to wit:

16. Sam Stidham a 1/360 part.
17. Letha Stidham , 1/360 part.

(Descendants of Sampson Stidham)

The children of Lucy Lester, deceased, who was a daughter of Sampson Stidham, deceased, who was a brother of the said George Tobler, deceased, to wit:

18. Hattie Givins a 1/90 part.
19. George Harrison a 1/90 part.

The following named children of Lizzie Boyce, deceased, who was a daughter of the said Lucy Lester, deceased.

20. Jennie Boyce, a 1/450 part.
21. Clarence Boyce a 1/450 part.
22. Lucy Boyce a 1/450 part.
23. Hattie Boyce a 1/450 part.
24. Beatrice Boyce a 1/450 part.

The following named children of Tamie McIntosh, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit:

25. Joe McIntosh a 1/210 part.
26. Wiley McIntosh a 1/210 part.

27. John McIntosh a 1/210 part.
28. George McIntosh a 1/210 part.
29. Rebecca McIntosh a 1/210 part.
30. Elzora Fields a 1/210 part.

The following named children of Elsie McIntosh, deceased, who was a daughter of the said Jamie McIntosh, [fol. 8] deceased, to wit:

31. Mammie Davis, nee Nevins a 1/1050 part.
32. Willie Smith a 1/1050 part.
33. Johanna Smith a 1/1050 part.
34. Henry Smith a 1/1050 part.
35. George Smith a 1/1050 part.

A son of Lizzie Fisher, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit:

36. Prince Lewis a 1/120 part.

A son of Hartless Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit:

37. Eddie Lewis a 1/120 part.

The following named children of William Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit:

38. Elmore Lewis a 1/720 part.
39. Sarah Lewis McSwain a 1/720 part.
40. Jesse Lewis a 1/720 part.
41. Robert Lewis a 1/720 part.
42. William Lewis a 1/720 part.
43. Lennie Lewis a 1/720 part.

The following named children of Katie McIntosh, deceased, who was a daughter of the said Lizzie Fisher, deceased, to wit:

44. Mary Manuel a 1/360 part.
45. Roy McIntosh a 1/360 part.
46. Roxyann McIntosh a 1/360 part.

(Descendants of Friday Tobler)

The following named children of Dave Friday, deceased, who was the son of Jack Friday, deceased, who was a son

of Friday Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

[fol. 9] 47. Berry Friday a 1/100 part.
48. Louis Friday a 1/100 part.
49. Jack Friday a 1/100 part.
50. Bennie Friday a 1/100 part.
51. Billy Friday a 1/100 part.
52. Katie Harrison a 1/100 part.
53. Jack Durant a 1/100 part.
54. Edward Friday a 1/100 part.

The following named children of Rebecca Watley, deceased, who was a daughter of the said Dave Friday, deceased, to wit:

55. Beacher Watley a 1/100 part.
56. Jack Watley a 1/400 part.
57. Beatrice Watley a 1/400 part.
58. Myrtle Watley a 1/400 part.

The daughter of Anna Vans, deceased, who was the daughter of the said Dave Friday, deceased, to wit:

59. Dorothy Grayson a 1/100 part.

(Descendants of Dinah Grayson)

The following named children of Tommy Grayson, deceased, who was the son of Dinah Grayson, deceased, who was the sister of the said George Tobler, deceased, to wit:

60. Billy Grayson a 1/60 part.
61. Leona Grayson a 1/60 part.
62. Katie Grayson a 1/60 part.
63. Lucy Grayson a 1/60 part.
64. Janey Grayson a 1/60 part.
65. Cooper Grayson a 1/100 part.

(Decendants of Jim Boy Tobles)

The following named children of Jim Boy Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

[fol. 10] 66. Elsie Edwards a 1/130 part.
67. Sam Tobler a 1/130 part.

68. Dick Tobler a 1/130 part.
69. Roxanna Sneed a 1/130 part.
70. Sophia Smith a 1/130 part.
71. Sandy Tobler a 1/130 part.
72. Lidia Connor a 1/130 part.
73. Ben Tobler a 1/130 part.

A daughter of Jack Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

74. Arizona Tobler a 1/130 part.

The following named children of Bob Tobler, deceased, who was a son of the said Jim Boy Tobler, to wit:

75. Bula Tobler a 1/260 part.
76. Lula Tobler a 1/260 part.

The following named children of Fred Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

77. Pleas Tobler a 1/260 part.
78. Ida Tobler a 1/260 part.

The following named children of Jack Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

79. Mariah Jenkins a 1/100 part.
80. Pauline Tobler a 1/260 part.

The following named children of Aaron Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

81. Aaron Tobler a 1/390 part.
82. Alice McNac a 1/390 part.

A son of Lula Tobler, deceased, who was a daugther of the said Aaron Tobler, deceased, to wit:

83. Sandy Grayson a 1/390 part.

[fol. 11] (Descendants of Hannah Grayson)

A son of Hannah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit:

84. Dick Thursday a 1/40 part.

The following named children of Leah Hawkins, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit:

85. Peter Hawkins a 1/320 part.
86. Joe Hawkins a 1/320 part.
87. Sambo Hawkins a 1/320 part.
88. Dave Hawkins a 1/320 part.
89. Robert Hawkins a 1/320 part.
90. Mack Hawkins a 1/320 part.

The following named children of Hager White, deceased, who was a daughter of the said Leah Hawkins, deceased, to wit:

91. Tommy White a 1/960 part.
92. Rachie White a 1/960 part.
93. Jessie Casey a 1/960 part.

A daughter of Willie Hawkins, deceased, whom was a son of the said Leah Hawkins, deceased, to wit:

94. Galula Hawkins a 1/320 part.

A daughter of Sibbie Ross, deceased, who was the daughter of the said Hannah Grayson, deceased, to wit:

95. Patsy Harrison a 1/40 part.

The following named children of Katie Corbray, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit:

96. Rose Corbray a 1/120 part.
97. Mary Corbray a 1/120 part.

The following named children of Hannah Perry, de- [fol. 12] ceased, who was a daughter of the said Katie Corbray, deceased, to wit:

98. Nettie Perry a 1/240 part.
99. Esther Lee Perry a 1/240 part.

(Descendants of Phoebe Stephens)

The following named children of Phoebe Stephens, deceased, who was a sister of the said George Tobler, deceased, to wit:

100. Joe Stephens a 1/40 part.
101. Morris Stephens a 1/40 part.

The following named children of Sonny Grayson, deceased, who was a son of the said Phoebe Stephens, to wit:

102. Joe Grayson a 1/280 part.
103. Leah Cully a 1/280 part.
104. Phoebe White a 1/280 part.
105. Micey Goff a 1/280 part.
106. Gracie Watts a 1/280 part.
107. Beatrice Watts a 1/280 part.

A daughter of Emmie Rowe, deceased, who was a daughter of the said Sonny Grayson, deceased, to wit:

108. Esther Rowe a 1/280 part.

A son of Leah Jamison, deceased, who was a daughter of the said Phoebe Stephens, deceased, to wit:

109. Monday Jamison a 1/80 part.

The following named children of Henry Murrell, deceased, who was a son of Leah Jamison, deceased, to wit:

110. Jeff Murrell a 1/240 part.
111. Percilla Murrell a 1/240 part.
112. Lou Daisy Murrell a 1/240 part.

(Descendants of Easy Rowe)

The following named children of Easy Rowe, deceased, [fol. 13] who was a sister of the said George Tobler, deceased, to wit:

113. Jim Samuels a 1/50 part.
114. Amy Wilson a 1/50 part.

A son of Cloa Marshall, deceased, who was a daughter of the said Easy Rowe, deceased, to wit:

115. Thomas Boone a 1/150 part.

The following named children of Celia Frowe, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit:

116. William London a 1/450 part.
117. Fred Frowe a 1/450 part.
118. Georgie Frowe a 1/450 part.

The following named children of Katie McKillop, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit:

119. Florence McKillop a 1/750 part.
120. James McKillop a 1/750 part.
121. Martha McKillop a 1/750 part.
122. Victoria Davis a 1/750 part.
123. Annie Davis a 1/750 part.

The following named children of Sampson Brown, deceased, who was a son of the said Easy Rowe, deceased, to wit:

124. Johnny Brown a 1/550 part.
125. Wallace Brown a 1/550 part.
126. Nellie Brown a 1/550 part.
127. Edward Brown a 1/550 part.
128. Russell Brown a 1/550 part.
129. Harry Brown a 1/550 part.
130. John Brown a 1/550 part.
131. Paul Brown a 1/550 part.
132. Rose Manuel a 1/550 part.
[fol. 14] 133. Willie Brown a 1/550 part.
134. Robert Brown a 1/550 part.

A daughter of Elisa Jackson, deceased, who was a daughter of Rose Alexander, deceased, who was a daughter of the said Easy Rowe, deceased, to wit:

135. Ivy Grayson a 1/50 part.

(Descendants of Mimmie Grayson)

The following named children of Mimmie Grayson, deceased, who was the sister of the said George Tobler, deceased, to wit:

136. Dilsy Hope a 1/30 part.
137. Richard Grayson a 1/30 part.

The following named children of Dinah Tucker, deceased, who was a daughter of the said Mimmie Grayson, deceased, to wit:

138. Mima Byrd a 1/90 part.
139. Bettie Tucker a 1/90 part.

The following named children of Mary Jones, deceased, who was a daughter of the said Dinah Tucker, deceased, to wit:

140. Luther Jones a 1/360 part.
141. Robert Jones a 1/360 part.
142. Wyatt Jones a 1/360 part.
143. Alice Jones a 1/360 part.

The plaintiffs further state that they are entitled to the immediate possession of the land herein described as tenants in common with each other, and the defendants herein; that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann, and Dickson Q. Brown, are in possession of said lands claiming to be the owners thereof to the exclusion of the plaintiffs, in and to said lands and every part thereof; [fol. 15] that the possession of said defendants of the said lands to the exclusion of the plaintiffs is wrongful and unlawful and that they the said defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann, and Dickson Q. Brown, wrongfully and unlawfully keep the plaintiffs, each and all of them out of the possession of said lands and every part thereof.

Second

The plaintiffs for a further and a second cause of action against these defendants hereby refer to their first and

foregoing cause of action, and make the allegations therein contained, parts of this their second cause of action as though fully set forth herein, and state that of the land described in the first and foregoing cause of action, of this petition, each of them is the owner in fee of the following undivided portions and interests, to wit:

Micy Keys a 1/20, Isom Grayson a 1/60, Paulina Carolina a 1/480, Alice Carolina a 1/480, Bertha Grayson a 1/480, Gertie Carolina a 1/480, Polly Grayson a 1/480, Louisa Williams a 1/480, Dock Grayson a 1/480, Zack Grayson a 1/480, Delilah Hutton a 1/360, Sam Haynes a 1/360, Alice Hunter a 1/360, Rose Haynes a 1/360, Rayford Hutton a 1/360, Sam Stidham, 1/720, Letha Stedham a 1/720, Hattie Givens a 1/180, George Harrison a 1/180, Jennie Boyce a 1/900, Clarence Boyce a 1/900, Lucy Boyce a 1/900, Hattie Boyce a 1/900, Beatrice Boyce a 1/900, Joe McIntosh a 1/420, Willie McIntosh a 1/420, John McIntosh a 1/420, George McIntosh a 1/420, Rebecca McIntosh a 1/420, Elzora Fields a 1/420, Mamie Davis a 1/2100, Willie Smith a 1/2100, Johanna Smith a 1/2100, Henry Smith a 1/2100, George Smith a 1/2100, Prince Lewis a 1/240, Eldie Lewis a 1/240, Elmore Lewis a 1/1440, Sarah Lewis McSwain a 1/1440, Jessie Lewis a 1/1440, Robert Lewis a 1/1440, William Lewis a 1/1440, Lennie Lewis a 1/1440, Mary Manuel a 1/720, Roy McIntosh a 1/720, Roxyann McIntosh a 1/720, Berry Friday a 1/200, Lonis Friday a 1/200, Jack Friday a 1/200, Bennie Friday a 1/200, Billy [fol. 16] Friday a 1/200, Katie Harrison a 1/200, Julia Durant a 1/200, Edward Friday a 1/200, Beacher Watley a 1/800, Jack Watley a 1/800, Beatrice Watley a 1/800, Myrtle Watley a 1/800, Dorthey Grayson a 1/200, Billie Grayson a 1/120, Leona Grayson a 1/120, Katie Grayson a 1/120, Lucy Grayson, a 1/120, Janney Grayson a 1/120, Cooper Grayson a 1/120, Elsie Edwards a 1/260, Sam Tobler a 1/260, Dick Tobler a 1/260, Roxanna Sneed a 1/260, Sophia Smith a 1/260, Sandy Tobler a 1/260, Lydia Connor a 1/260, Ben Tobler a 1/260, Arizona Tobler a 1/260, Bula Tobler a 1/520, Lula Tobler a 1/520, Pleas Tobler a 1/520, Ida Tobler a 1/520, Mirah Jenkins a 1/520, Paulina Tobler a 1/520, Aaron Tobler a 1/780, Alice McNack a 1/780, Sandy Tobler a 1/780, Dick Thursday a

1/80, Peter Hawkins a 1/640, Joe Hawkins a 1/640, Sambo Hawkins a 1/640, Dave Hawkins a 1/640, Robert Hawkins a 1/640, Mack Hawkins a 1/640, Tommy White a 1/1920, Rachie White a 1/1920, Jessie Casey a 1/1920, Galula Hawkins a 1/640, Patsey Harrison a 1/80, Rose Corbray 1/240, Mary Corbray 1/240, Nettie Berry a 1/480, Esther Lee Perry a 1/480, Joe Stephens a 1/80, Morris a 1/80, Joe Grayson a 1/560, Leah Cully a 1/560, Phœbe White a 1/560, Micy Goff a 1/560, Gracie Watts a 1/560, Beatrice Watts a 1/560, Esther Rowe a 1/560, Monday Jamison a 1/160, Jeff Murrell a 1/480, Pruscilla Murrell a 1/480, Lou Daisy Murrell a 1/480, Jim Samuels a 1/100, Emmie Wilson a 1/100, Thomas Boone a 1/300, William London a 1/900, Fred Frowe a 1/900, George Frowe a 1/900, James McKillop a 1/1500, Martha McKillop a 1/1500, Victoria Davis a 1/1500, Annie Davis a 1/1500, Jonnie Brown a 1/1100, Wallace Brown a 1/1100, Nellie Brown a 1/1100, Edward Brown a 1/1100, Russell Brown a 1/1100, Harry Brown a 1/1100, John Brown a 1/1100, Paul Brown a 1/1100, Rose Manuel a 1/1100, Willie Brown a 1/1100, Robert Brown a 1/1100, Ivy Grayson a 1/100, Dilsy Hope a 1/60, Richard Grayson a 1/60, Mima Byrd a 1/180, Bettie Tucker a 1/180, Luther Jones a 1/720, Robert Jones a 1/720, Wyatt Jones a 1/720, Alice Jones a 1/720.

[fol. 17] The plaintiffs further state that they derive their title to their respective shares, interests and portions aforesaid in the lands herein described as set forth in the first and foregoing cause of action hereof.

The plaintiffs further state that the defendants, and each of them, claim some right, title and interest in said lands, the exact nature and extent of which is to the plaintiffs unknown, and that the defendants or some of them are the owners in fee of certain undivided interests in the lands herein described the extent of which is to the plaintiffs unknown; that the defendants herein should be required to answer and set forth whatever interests, if any, they have in said lands.

The plaintiffs further state that the parties hereto can not agree upon a partition of said lands and that the plaintiffs herein are entitled to a partition thereof.

Third

For a further and a third cause of action, the plaintiffs hereby refer to the first and second causes of action herein stated and make the allegations thereof parts of this their third cause of action as though fully set forth herein, and further state that they and the defendants herein are tenants in common of the lands described in their first cause of action.

The plaintiffs further state that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dickson Q. Brown, disregarding and denying the rights and title of the plaintiffs in and to said lands, entered upon said lands and drilled oil and gas wells thereon and have taken, and are now continuing to take therefrom large quantities of oil and gas, the amount and value of which are to the plaintiffs unknown, and have converted, appropriated and sold and are continuing to take and appropriate all of the same, and the proceeds thereof to their own use and benefit and have refused and still refuse to account to or pay the plaintiffs for their interests therein and portions thereof.

[fol. 18]

Fourth

The plaintiffs, for a further and fourth cause of action, refer to the foregoing causes of action in this petition set forth, and make the allegations thereof parts of this their fourth cause of action as though fully set forth herein; and state that the lands described in their first cause of action herein are of great value, principally because of the oil and gas thereunder and therein contained, and that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dickson Q. Brown have drilled several oil and gas wells thereon and now daily take from said lands large quantities of oil and gas and convert and dispose of the same to their own use and benefit, and threaten to and will continue so to do, to the irreparable injury of the plaintiffs; that the taking of said oil and gas from the said lands by the said defendants and the conversion thereof to their own use and benefit is a violation of the rights of

the plaintiffs, that the taking of said oil and gas from said lands materially, irreparably and permanently damages said lands, and that when the oil and gas deposits underlying said lands are exhausted, the value of said lands will be principally if not wholly destroyed.

The plaintiffs further state that their respective rights and titles in and to said lands and the oil and gas therein contained are well founded and based upon good grounds; that they have no adequate remedy at law and that unless a receiver be appointed by a proper order of this court after due notice and hearing, and authorized to take possession of said lands and the oil and gas wells thereon and proceed to conserve the oil and gas underlying and contained in said lands and impound the same or the proceeds thereof for the use and benefit of these plaintiffs and such of the defendants as have an interest therein, the said defendants last above named, will continue and produce, take and appropriate to their own use and benefit all the oil and gas underlying and contained in said lands, to the permanent, irreparable and material injury to these plaintiffs and in violation of their rights.

[fol. 19] Wherefore, the plaintiffs pray judgment against the defendants for restitution and possession of their undivided portions and interests in said lands as set forth and alleged herein, the plaintiffs further pray an order of this Court requiring the defendants to answer and set forth the nature and extent of their respective title and interest in the lands herein described.

The plaintiffs further pray that they be adjudged and decreed to be the owners in fee, each, of the undivided interest of which they allege to be the respective owners as set forth herein, that they and each of them have judgment against the defendants, confirming their title and interest in said lands as herein set forth, and that partition of said lands be made according to the respective rights of the parties interested therein, and that if the same cannot be equitably divided that the lands be sold and the proceeds thereof be divided between the parties interested therein according to their respective rights and interests.

The plaintiffs further pray that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker

Oil & Gas Company, James Brann and Dixon Q. Brown be required to answer and set forth the quantity and value of the oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiffs have judgment against the named defendants for the value of such portions of the oil and gas as they are entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiffs further pray that a receiver be appointed immediately by a proper order of this Court in this case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action for [fol. 20] the use and benefit of these plaintiffs and such of the defendants as may be found to have an interest therein, and that the defendants and each of them, their agents and employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil and gas or taking oil and gas therefrom or selling, or otherwise disposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the Court make such other interlocutory orders as may be just and proper; that the plaintiffs recover their costs and that they be decreed such other and further relief as to the Court may appear just and equitable.

A. A. Hatch, Attorney for Plaintiffs. Jess W. Watts, Gidney & Gidney, Turner & Turner, Porter, Wallace & Stephens, W. T. Hunt, R. E. Hunt, of Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 21] EXHIBIT A TO PETITION

Department of the Interior

Allottee's Certificate

Commission of the Five Civilized Tribes

Roll No. 5641 F. Deceased No. 1102

Muskogee, Ind. Ter., July 9th, 1906.

Nancy Colbert, Deceased

Subdivision of	Section	Town	Range
Lot 2 of	31	17	12
NE-4 of NE-4 of	31	17	12
NW-4 of NW-4 of SE-4 of NE-4 of	31	17	12
NW-4 of SW-4 of	17	18	12
E-2 of SE-4 of SE-4 of	29	18	12
NW-4 of SE-4 of SE-4 of	20	18	12
E-2 of SW-4 of SE-4 of SE-4 of	20	18	12
NW-4 of SW-4 of SE-4 of SE-4 of	20	18	12

473.39 A.

Original delivered to —— ——.

EXHIBIT B TO PETITION

Department of the Interior

Allottee's Certificate

Commission to the Five Civilized Tribes

Roll No. 5640 F. Deceased No. 1101

Muskogee, Ind. Ter., July 9th, 1906.

Garfield Colbert, Deceased

Subdivision of	Section	Town	Range
NW-4 of NE-4 of	30	18	12
NE-4 of NE-4 of	30	18	12
SW-4 of NW-4 of	29	18	12
SW-4 of NE-4 of	29	18	12

160 A.

Original delivered to —— ——.

[fol. 22] IN THE DISTRICT COURT OF CREEK COUNTY

[Title omitted]

ANSWER OF DEFENDANTS WILLIAM H. HARRIS AND JAMES A. HARRIS

And now come defendants, William H. Harris, and James A. Harris, and for their answer to plaintiffs' petition, filed herein, deny each and every allegation therein contained and say the same are not true in manner and form as therein alleged and set forth.

And for their further answer to plaintiffs' said petition these defendants say that Nancy Colbert and Garfield Colbert were living on the first day of April, 1899, but died during the year 1900, without having been enrolled and without having received an allotment of land in the Creek Nation. That during the early part of the year 1906, under the authority contained in Section 28 of the Original Creek Agreement they were duly enrolled on the Freedmen Roll of the Creek Nation, and on July 9th, 1906, allotments of land were selected and set apart in their names. That said lands are the lands involved in this action and are substantially described by plaintiffs in said petition.

That at the time said allotments were selected and made as aforesaid an undivided half interest in both allotments descended to and became vested in Gertrude Grayson, who was then and there a citizen of the Creek Nation and a half sister of the said allottees, all being children of the same mother. That on July 9th, 1906, the said Gertrude Grayson became the owner of estate of inheritance therein and from that time until she died in April, 1907, she, the said Gertrude Grayson, was the owner thereof in fee simple.

That in the month of April, 1907, the said Gertrude Gray- [fol. 23] son died seized and possessed of said lands and property, which then and there descended to and became vested in Cloria Grayson, her grandmother, regardless of her citizenship.

And for their further answer to plaintiffs' petition these defendants deny that said Gertrude Grayson was an illegitimate child, but to the contrary, they aver that she was the legitimate offspring of Louisa Grayson and Armstead Foster, both citizens of the Creek Nation. That her said mother

died in 1900, and her said father survived her and is still living.

That these defendants claim title to said land under and by virtue of the following conveyances, to wit:

One warranty deed dated January 2nd, 1908, made and executed by Micy Keys, nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson.

Also one General Warranty deed dated January 4th, 1908, made and executed by Cloria Grayson to L. A. Bell.

Also one General Warranty deed dated October 28th, 1908, made and executed by Armstrong Foster to L. A. Bell.

Also one General Warranty deed dated November 28th, 1908, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris, for an undivided one-half interest in and to said property.

Also one General Warranty deed dated November 19th, 1909, made and executed by Cloria Grayson to L. A. Bell, James A. Harris and William H. Harris.

Also one General Warranty deed dated June 30th, 1913, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris.

Also one tax deed dated May 31st, 1917, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson.

[fol. 24] Also one deed from said Ira J. Anderson dated 1917 to these defendants and others.

Whereby and by reason of said deeds of conveyances these defendants became, and are the owners in fee, of an undivided one half interest in and to all the lands and property described by plaintiffs' in their said petition.

And for their further answer to plaintiffs' petition these defendants aver that they and those under whom they claim, and their co-tenants, have been in open, notorious, adverse, uninterrupted and exclusive possession of all of said lands, using and occupying same from the year 1906 until the present time, having excluded plaintiffs and all of them therefrom, and having denied them all right to said property or any part thereof for more than ten years next before the bringing of said action by plaintiffs, and therefore these defendants plead the statute of ten years limitation and the statute of seven year limitation, and the statute of five

year limitation, and say that plaintiffs' cause of action, if any they ever had, has been and is forever barred.

And for their further answer to plaintiffs' petition these defendants deny that plaintiffs are citizens of the Creek Nation or descendants of citizens of the Creek Nation, and deny that they or any of their ancestors' names appear or can be found on the Rolls of the Creek Freedmen made by J. W. Dunn under authority of the United States, or that they or any of them, or their ancestors, were ever rightfully admitted to membership in the Creek Tribe; and defendants specially deny that any of the plaintiffs are in any manner whatever related to Gertrude Grayson, and therefore defendants charge that none of the plaintiffs have any lawful claim to or right in any of the property set up and described by them in their petition.

These defendants further show to the Court that plaintiffs' claims are unjust, illegal and unfounded, but that they constitute and are a slander and a cloud upon the title of [fol. 25] these defendants' property which have been and are being asserted wrongfully and unlawfully against them and which plaintiffs will continue to assert wrongfully and unlawfully against these defendants and their said property and thus continue to slander and cloud the title thereof unless enjoined by a decree of this court.

Wherefore, these defendants pray that plaintiffs take nothing by their suit and that judgment be entered herein quieting the title of said property in defendants, and that plaintiffs and all of them be enjoined from ever hereafter setting up any right, title or claim to said property or any part thereof, or from interfering with these defendants in the peaceable possession and enjoyment thereof. Defendants further pray for all costs and general relief.

Robert F. Blair, George S. Ramsey, Attorneys for Defendants.

IN DISTRICT COURT OF CREEK COUNTY

[Title omitted]

ANSWER OF QUAKER OIL AND GAS COMPANY—Filed October 18, 1917

Comes now the defendant, Quaker Oil & Gas, Company, and adopts the answer of the defendants, William H. and James A. Harris, and joins in all the denials, allegations and pleas therein set forth, and further states that it claims a valid oil and gas mining lease on thirty-seven and one-half (37½) acres of the Nancy Colbert allotment described in the pleadings. Said thirty-seven and one-half (37½) acres being described as follows:

[fol. 26] The East Half (E½) of the Southeast Quarter (SE¼); the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼); the North Half (N½) of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼); and the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of the Southeast (SE¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Eighteen (18) North, Range Twelve (12) East, containing 37.50 acres of land more or less, according to the Government survey.

And defendant claims that it has now and has at all times since it went into possession of said land, had the legal and equitable right, title and privilege to operate said land for oil and gas and extract the oil and gas therefrom, and denies that plaintiffs or either of them have any right, title or interest in said lands or any part thereof.

Having fully answered, defendant prays that palintiffs take nothing.

G. Earl Schaffer, George S. Ramsey, Counsel for Defendant.

[File endorsement omitted.]

[fol. 27] IN DISTRICT COURT OF CREEK COUNTY

[Title omitted]

REPLY TO ANSWER OF WILLIAM H. HARRIS AND JAMES A. HARRIS—Filed Jan. 24, 1918

Come now the plaintiffs in the above entitled action and for reply to the answer of the defendants, William H. Harris and James A. Harris, filed herein, deny each and every allegation of new matter therein contained, except such as are herein specifically admitted.

For further reply the plaintiffs state that neither Cloria Grayson nor Armstead Foster have and never had any right, title or interest in and to the lands in controversy herein, and that the deeds of conveyance by them made, described in defendants' answer and under which the defendants claim title to said land, are each and all of them void for that the said Cloria Grayson and Armstead Foster had no right, title or interest in said land and have never acquired any interest or title therein. That the deeds from L. A. Bell and H. Anna Bell, his wife, to the defendants, William H. Harris and James A. Harris, described in defendants' answer and under which they claim title through the said L. A. Bell are void for that the said L. A. Bell and H. Anna Bell had and never have had any right, title or interest in and to said land.

The plaintiffs further state that the deed described in defendants' answer as having been dated January 2nd, 1908, and made and executed by Micy Keys, nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson is not the deed of the said Micy Keys and Jim Tobler, nor either of them.

The plaintiffs further state that the tax deed mentioned in defendants' answer, made and executed by J. E. Bruin, County Tresurer of Creek County, Oklahoma, to Ira J. [fol. 28] Anderson is based upon a purported sale of the land described in said deed for taxes assessed and levied against said land for the yer 1913. That the said tax deed is void for that it was made and issued without authority of law, without right and contrary to law, in this that the land described in said deed was not listed and assessed for

taxation for the year 1913 as prescribed and directed by law and that said assessment was erroneous and illegal, and for that the County Treasurer failed and neglected to give notice as required by law for the amount of taxes assessed and levied against said land for the year 1913, and when the same became due and delinquent; and for that the taxes for the year 1913 levied and assessed against said land had not become delinquent at the time of the purported sale thereof for said taxes and that said land was not subject to sale for delinquent taxes at the time said sale was held and purported to be made, and that said sale was in all things illegal and void; and for that the sale of said land for taxes of 1913 was not made as required by law; and for that the return of said sale was not made to the County Clerk and that a record thereof was not kept as required by law.

The plaintiff further states that the deed described and mentioned in defendants' answer from Ira J. Anderson, dated 1917, to the defendants and others is void for that the said Ira J. Anderson had and never has had any rights, title or interest in and to said lands.

The plaintiff hereby offer to pay to the defendants all taxes, penalties, interest and costs which they would be bound to pay if they were redeeming the land herein described from the purported tax sale, and hereby offer to pay to the defendants such other and further sum as the Court may find just and equitable to reimburse the defendants for all moneys paid out and expended by them for or on account of taxes, penalties, costs and interest thereon assessed and levied against said land.

Wherefore, in addition to the prayer of their petition, [fol. 29] the plaintiffs pray that the deeds described and mentioned in the answer of the defendants be declared void, that they be canceled, set aside and held for naught.

A. A. Hatch, Attorney for Plaintiff. Jess W. Watts, Porter, Gidney & Gidney, Wallace & Stephens, Turner & Turner, of Counsel for the Plaintiffs.

Duly sworn to by Elsie Edwards. Jurat omitted in printing.

[fol. 30] [File endorsement omitted.]

In District Court of Creek County

[Title omitted]

Reply to Answer of Quaker Oil and Gas Co.

Come now the plaintiffs in the above entitled case and for reply to the answer of the defendant, Quaker Oil and Gas Company, filed herein, deny each and every allegation of new matter therein contained, except such as are herein after specifically admitted.

For further reply the plaintiffs state that neither Cloria Grayson nor Armstead Foster have and never had any right title or interest in and to the lands in controversy herein, and that the deeds of conveyance by them made, described in the answer of William H. Harris and James A. Harris herein filed and adopted by the Quaker Oil and Gas Company, are each and all of them void for that the said Cloria Grayson and Armstead Foster had no right, title or interest in said lands and never acquired any interest or title therein.

The plaintiffs further state that the deeds from L. A. Bell and H. Anna Bell, his wife, to the defendants, William H. Harris and James A. Harris, described in their answer and under which the defendants claim title through the said L. A. Bell, are void for that the said L. A. Bell and H. Anna Bell had a and never have had any right title or interest in and to said land.

The plaintiffs further state that the deed described in [fol. 31] the answer of the defendants, William H. Harris and James A. Harris, filed herein, as having been dated January 2nd, 1908, and made and executed by Micy Keys nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson is not the deed of the said Micy Keys and Jim Tobler, nor either of them.

The plaintiffs further state that the tax deed mentioned in the answer of the defendants, William H. Harris and James A. Harris, herein filed, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson, is based upon a purported sale of the land described in said deed for taxes assessed and levied against said land for the year 1913. That the said tax deed is void for that it was made and issued without authority

of law, without right and contrary to law, in this that the land described in said deed was not listed and assessed for taxation for the year 1913, as prescribed and directed by law and that said assessment was erroneous and illegal, and for that the County Treasurer failed and neglected to give notice as required by law of the amount of taxes assessed and levied against said land for the year 1913, and when the same became due and delinquent; and for that the taxes for the year 1913 levied and assessed against said land had not become delinquent at the time of the purported sale thereof for said taxes and that said land was not subject to sale for delinquent taxes at the time said sale was held and purported to be made, and that said sale was in all things illegal and void; and for that the sale of said land for taxes of 1913 was not made as required by law; and for that the return of said sale was not made to the County Clerk and that a record thereof was not kept as required by law.

The plaintiff further states that the deed mentioned in the said answer of William H. Harris and James A. Harris, from Ira Anderson to the defendant, William H. Harris and James A. Harris and others, is void for that the said Ira J. Anderson had and never has had any right, title or interest in and to said lands.

[fol. 32] The plaintiffs further state that the oil and gas mining lease mentioned in the answer of this defendant and under which it claims possession, *virgt* and title in said land was not made or executed by these plaintiffs or any of them, and is not the deed and conveyance or contract of these plaintiffs or any of them, but as to these plaintiffs is void.

Wherefore, in addition to the relief prayed for in their petition, the plaintiffs pray that the deeds mentioned in the answer of William H. Harri sand James A. Harris and the oil and gas mining lease mentioned in the answer of the Quaker Oil and Gas Company be each and all of them declared void, be canc-led, set aside and held for naught.

A. A. Hatch, Attorney for Plaintiffs. Jess W. Watts, Gidney & Gidney, Turner & Turner, Porter, Wallace & Stephens, of Counsel for Plaintiffs.

In District Court of Wagner County

Isom Grayson et al., Plaintiffs,

vs.

James A. Harris et al., Defendants

Intervention of Nellie Harris—Filed June 9, 1919

Comes now Nellie Harris and by leave of Court first had and obtained files this her plea of intervention in this cause. Plaintiff adopts all parts of petition and amended petition heretofore filed in this cause in so far as same does not conflict with the interest of this petitioner.

[fol. 33] This plaintiff further states that George Tobler, referred to in this cause, died about the year 1890, leaving surviving him his daughter, Louisa Colbert, a citizen of the Creek Nation, and his wife, Clora Grayson, a non-citizen of the Creek Nation, and no other descendants, not mother or father; that the said George Tobler had the following brothers and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoeba Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham, Jim Boy Tobler, Dinah Grayson and Jack Tobler, all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys; that all of said deceased brothers and sisters of said George Tobler left surviving them Creek descendants, who are heretofore named in plaintiffs' original petition and amended petion and are all related to them and to the said George Tobler, as therein set forth; that your petitioner is the widow of the said Jim Boy Tobler, referred to in this cause as one of the brothers of George Tobler; that at the time of the death of the said Jim Boy Tobler *he* owned and possessed a 1/11th interest in the lands involved in this cause by reason of his relationship to all the parties herein referred to, and that at his death a 1/22nd interest in the land involved herein passed to your petitioner as his widow.

Wherefore, premises considered, plaintiff prays judgment against the defendants for restitution and possession of their undivided portion and interest in said lands, as set forth and alleged herein. Plaintiff further prays for an order of this court requiring the defendants to answer

and set forth their nature and extent of their respective titles and interest in the land herein described; that this plaintiff, together with the other plaintiffs, be adjudged and decreed to be the owners in fee each of the undivided interest of which they allege to be the respective owners as set forth in original and amended petitions filed herein; that they and each of them have judgment against the defendants confirming their title and interest in said lands and that partition of said land be made according to the respective rights of the parties interested therein, and that [fol. 34] if same cannot be equitably divided that the lands be sold and the proceeds thereof be divided between the parties interested therein according to their respective rights and interests.

The plaintiff further prays that the defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Brann and Dixon Q. Brown, be required to answer and set forth the quantity and value of oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiff have judgment against the said named defendants for the value of such portion of the oil and gas as she is entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiff further prays that a receiver be immediately appointed by a proper order of this court in this case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action, for the use and benefit of this plaintiff and such of the defendants as may be found to have an interest therein; and that the defendants and each of them, their agents, employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil or gas, or taking oil and gas therefrom or selling or otherwise disposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the court make such other interlocutory orders as may be just and proper; that the plaintiff recover her costs herein

and that she be decreed such other and further relief as to the court may appear just and proper.

Watt & Summers, Attorney- for Plaintiff.

[fol. 35] [File endorsement omitted.]

In District Court of Wagoner County

[Title omitted]

Petition of Elizabeth Randal et al.—Filed June 9, 1919

Come now Elizabeth Randal, Rachel Edwards and John Island, parties plaintiff herein, and by leave of court first had and obtained file this their plea of intervention in this cause. Plaintiff- adopt all parts of petition and amended petition of plaintiffs heretofore filed in this cause in so far as same does not conflict with the interest of these petitioners.

These plaintiffs further state that George Tobler, referred to in this case, died about the year 1880, leaving surviving him his daughter, Louisa Colbert, a citizen of the Creek Nation, and his wife, Clora Grayson, aa non-citizen of the Creek Nation, and no other defendants, nor mother nor father; that the said George Tobler had the following brothers and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoeba Stephens, Mimmie Grayson, Hannah Grayson, Simpson Stidham, Jim Boy Tobler, Dinah Grayson, and Jack Tobler, all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys; that all of said deceased brothers and sisters of said George Tob- [fol. 36] ler left surviving them Creek descendants, who are heretofore named in plaintiffs' original petition and plaintiffs' amended petition and are all related to them and to the said George Tobler, as therein set forth; that the said Jack Tobler is not mentioned in plaintiffs' petition or amended petition heretofore filed in this cause; that at the death of said Jack Tobler he left surviving him the following named persons as his heirs and to whom his estate passed under the laws then in force: Elizabeth Randal, who is the daughter and only living child of Jack Tob-

ler, Rachel Edwards, plaintiff herein, who was a daughter of Jerry Tobler, who was a son of Jack Tobler, deceased, and entitled to participate in his estate; and John Island, who was the son of Cora Island, who was a daughter of Jerry Tobler, a son of Jack Tobler; that the said John Island is the only person entitled to participate in the estate of Cora Island, deceased, as an heir to the estate of Jack Tobler; that by reason of all of which these petitioners claim to own a 1/11th interest in the lands involved in this cause by reason of their relationship, as herein set forth.

Wherefore, premises considered, plaintiffs pray judgment against the defendants for restitution and possession of their undivided portion and interest in said lands, as set forth and alleged herein. Plaintiffs further pray for an order of this court requiring the defendants to answer and set forth their nature and extent of their respective titles and interests in the land herein described; that these plaintiffs, together with the other plaintiffs, be adjudged and decreed to be the owners in fee each of the undivided interest of which they — alleged to be the respective owners as set forth in original and amended petitions filed herein; that they and each of them have judgment against the defendants confirming their title and interest in said lands and that partition of said land be made according to the respective rights of the parties interested therein, and that if the same cannot be equitably divided that the lands be sold and the proceeds thereof be divided between the parties interested therein according to these respective rights and interests.

[fol. 37] The plaintiffs further pray that the defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Braun and Dixon Q. Brown, be required to answer and set forth the quantity and value of the oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiffs have judgment against the said named defendants for the value of such portion of the oil and gas as they are entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiffs further pray that a receiver be immediately appointed by a proper order of this court in this

case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action, for the use and benefit of these plaintiffs and such of the defendants as may be found to have an interest therein; and that the defendants and each of them, their agents, employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil or gas, or taking oil and gas therefrom or selling or otherwise disposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the Court make such other interlocutory orders as may be just and proper; that the plaintiffs recover their costs herein and that they be decreed such other and further relief as to the Court may appear just and proper.

Watt & Summers, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 38] In District Court of Wagoner County

[Title omitted]

Order Making Elizabeth Randal et al. Party Plaintiffs—Filed June 13, 1919

Now, on this the 9th day of June, 1919, the petition of Elizabeth Randal, Rachal Edwards, John Island and Nellie Harris to be made party plaintiffs herein, and the defendants have offered no objections.

It is, therefore, ordered that the said Elizabeth Randal, Rachal Edwards, John Island and Nellie Harris be made party plaintiffs herein, and that they be authorized to file such pleadings setting up their interest in the land involved in this controversy as claimed by them.

Lucien B. Wright, District Judge.

[File endorsement omitted.]

[fol. 39] In District Court of Wagoner County

[Title omitted]

Reply of Nellie Harris—Filed June 18, 1919

Comes now, Nellie Harris, one of the plaintiffs in the above entitled cause, and for reply to the answer of William H. Harris and James A. Harris heretofore filed in this cause, and says and states:

That she denies each and every paragraph of said answer, except such matters as are herein specifically admitted. The plaintiff denies that at the death of Gertrude Grayson that the land herein involved then and there descended to and became vested in Clora Grayson, her grandmother, or that by reason of any deed made by her she conveyed to the defendants or any one else any interest in said lands.

Plaintiff denies, second, that Gertrude Grayson was the legitimate offspring of Louisa Grayson and Armstead Foster, or that Armstead Foster is a citizen of the Creek Nation.

Plaintiff, for further reply, says and states, that the purported deed, dated January 2, 1908, which is claimed to have been executed by Micy Keys, nee Tobler, and Jim Tobler to Clora Grayson, is not the deed of Micy Keys and Jim Tobler, but is a forgery; that the purported warranty deed, dated January 4, 1908, made and executed by Clora Grayson to L. A. Bell conveyed no title to the said L. A. Bell; that the purported deed, dated October 28, 1908, made and executed by Armstead Foster to L. A. Bell conveyed no title to the said L. A. Bell; that the purported warranty deed, dated November 28, 1908, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris for an undivided one-half interest in said [fol. 40] land, conveyed no title to the said William H. Harris and James A. Harris; that the purported warranty deed, dated November 19, 1909, made and executed by Clora Grayson to L. A. Bell, James A. Harris and William H. Harris, conveyed no title to said L. A. Bell, James A. Harris and William H. Harris; that the purported warranty

deed, dated June 30, 1913, made and executed by L. A. Bell and H. Anna Bell to William H. Harris and James A. Harris, conveyed no title to said William H. Harris and James A. Harris; that the purported tax deed, dated May 31, 1917, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson, conveyed no title to said Ira J. Anderson; that the purported deed from Ira J. Anderson, dated, 1917, to defendants, conveyed no title to them.

Plaintiff, for further reply, denies that by reason of said deeds, aforesaid, the defendants became or that they are now the owners in fee of an undivided one-half interest in and to the lands and property described in plaintiff's petition.

Plaintiff, for further reply, denies that the defendants and those under whom they claim have been in open, notorious, adverse, uninterrupted and exclusive possession of said lands, or any part thereof for more than ten years before the bringing of this suit by plaintiff. Plaintiff denies that the statute of ten years' limitation, and the statute of seven years limitation and the statute of five years' limitation have run as against plaintiff, or that plaintiff's cause of action is barred.

Wherefore, plaintiff prays for judgment herein as claimed in plaintiff's petition.

Watts & Summers, Attorneys for Plaintiff.

Duly sworn to by Nellie Harris. Jurat omitted in printing.

[fol. 41] [File endorsement omitted.]

In District Court of Creek County

[Title omitted]

Answer of Defendants Harris to the Intervention of Nellie Harris, Elizabeth Randal, Rachel Edwards and John Island—Filed July 1, 1919

And now come James A. Harris and William H. Harris and plead against these parties all the title they have heretofore set up against plaintiffs and defendants, Jim Colbert.

[fol. 42] And they further plead against these parties all the matters and things heretofore pleaded by them against their other adversaries herein, including the statutes of seven years' limitation, and five years' limitation.

And for their further answer herein these defendants deny each and every allegation contained in their said petitions of intervention herein, and say the same are not true.

Geo. S. Ramsey & Robert F. Blair, Attorneys for Said Defendant.

[File endorsement omitted.]

In District Court of Creek County

[Title omitted]

Amendment to Defendants Harris' Answer—Filed May 18, 1920

And now come defendants, James A. Harris and William H. Harris, and by permission of the court first had, file this their amendment to their answer, and say that if plaintiffs have stated any cause of action or proved any right of recovery, which is not admitted, but denied, then the same has been and is barred by the statutes of three years' limitation and the statute of two years' limitation.

Wherefore, defendants pray that plaintiffs take nothing by their suit.

Geo. S. Ramsey, Robert F. Blair, Attorneys for said Defendants.

[fol. 43] [File endorsement omitted.]

In District Court of Creek County

[Title omitted]

Journal Entry—Filed February 28, 1920

And now on this 21st day of February, 1920, the same being one of the regular days of the — term of this court, came on for final hearing the above entitled cause, and all parties being present and represented in court by counsel, the court makes and announces findings of facts and conclusions of law and finds the issues in favor of plaintiffs

and intervenors, except the heirs of Jim Boy Tobler and Micey Keys, and against defendants, to each and every and all of which defendants now in open court object, and the court overrules their objections to which defendants except and still except.

Thereupon, defendants file their motion for a new trial, which is heard by the court and overruled and denied to which defendants except, and judgment entered accordingly to which all defendants except. And now and at the time judgment is rendered by the court, in the presence of all the parties to this action, the trial judge, court clerk, and the sheriff, in open court, defendants give notice of their intention to appeal to the Supreme Court of the State of Oklahoma, which notice of their intention to appeal is now ordered entered and is entered by the court clerk in the trial docket of this court.

And the court fixes the amount of the appeal bond at [fol. 44] $15,000 to be given by defe*nda*-ts within thirty days from this date, and to be approved by the court clerk, and execution is ordered stayed during that time and thereafter according to law in such cases made and provided.

And for good cause shown to the court it is further ordered by the court that the time for making and serving a case-made is hereby extended for three months up to and including May 21st, 1920, and ten days is allowed thereafter for suggesting amendments, the same to be settled, signed and certified by the trial judge upon three days' notice.

Lucien B. Wright, Judge.

[File endorsement omitted.]

In District Court of Creek County

No. 6332

Isom Grayson et al., Plaintiffs,

vs.

James A. Harris et al., Defendants

Journal Entry

Findings of Facts, Conclusions of Law, and Decree

Now, on this 9th day of June, 1919, it being one of the days of the regular March, 1919, term of this, the District

Court for Creek County, Oklahoma, this the above entitled case came on for trial, the plaintiffs appearing by their attorneys, A. A. Hatch, Jesse W. Watts, W. T. Hunt, Turner & Turner, J. T. Smith, Wallace & Stephens and John E. Williams; the defendant, James A. Harris, appearing in [fol. 45] person and by his attorney, Robt. E. Blair, the defendants, William H. Harris and James H. Kennedy, appearing by their attorney, Robt. F. Blair, the Ohio Cities Gas Company having been substituted as a defendant for the Quaker Oil & Gas Company, appearing by its attorney, G. Earl Schaffer, the defendant, James Brann, appearing by his attorneys, West, Sherman, Davidson & Moore, and the defendant Jim Colbert, appearing in person, and by his attorney, R. E. Jackson, and judgment having been given and rendered against the defendant, Jim Colbert on the pleadings and a jury being waived the case is tried to the Court.

And now, on the 19th day of June, 1919, the cause is continued by agreement of parties to the 8th day of July, 1919, for further hearing, and now on the 8th day of July, 1919, this cause comes on for further hearing, and the Court having heard the evidence and argument of counsel, the court takes the case under advisement, and now on the 21st day of February, 1920, the Court having been fully advised finds from the evidence and agreed statement of counsel the facts as follows:

Findings of Facts

First. That James Brann is the owner of an undivided one-half of the Southwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northwest of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen, North, Range Twelve East; that his title thereto is through mesne conveyances from Jim Colbert, the father of Garfield Colbert.

Second. That all of the plaintiffs named in the petition herein filed, except Rose Manuel, Willie Brown and Robert Brown, are Creek Citizens. That the interveners are Creek Citizens.

Third. That Nancy Colbert, deceased, Louiza Colbert, deceased, Garfield Colbert, deceased, and Gertrude Gray-[fol. 46] son, deceased, were all Creek Citizens and enrolled as such on the Approved and Final Roll of Creek Freedman, and that Jim Colbert is a Creek Citizen and duly enrolled upon said roll.

Fourth. That the said Nancy Colbert died, intestate, without issue and never having been married, about the first day of March, 1900, leaving surviving her the said Jim Colbert, her father, and the said Louiza Colbert, since deceased, her mother.

Fifth. That the said Louiza Colbert died, intestate, about March 7th, 1900, leaving her surviving Jim Colbert, her husband, and Garfield Colbert, since deceased, her son, and the said Gertrude Grayson, since deceased, her daughter, and no other descendants.

Sixth. That the said Garfield Colbert died, intestate, without issue and never having been married, in the month of June, 1900, leaving him surviving Jim Colbert, his father and the said Gertrude Grayson, since deceased, his half sister, and no other brothers or sisters, or children of deceased brothers or sisters.

Seventh: That on the 9th day of July, 1906, there was allotted in the name of Nancy Colbert to her Creek heirs the following described lands of Creek Nation, to wit:

Lot Two and the Northeast Quarter of the Northeast Quarter and the Northwest Quarter of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, in Township 17 North of Range 12 East, and the Northwest Quarter of the Southwest Quarter of Section 17, and the East Half of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the East Half of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 20, all in Township 18 North [fol. 47] of Range 12 East, and all in Creek County, Oklahoma.

Eighth. That on the 9th day of July, 1906, there was allotted in the name of Garfield Colbert to his heirs the following described lands of the Creek Nation, to wit:

The Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter to Section 29, and the North Half of the Northeast Quarter of Section 30, all in Township 18 North of Range 12 East, in Creek County, Oklahoma.

Ninth. That the said Jim Colbert, and Gertrude Grayson were both living on the 9th day of July, 1906, the date of the selection of the allotment aforesaid.

Tenth. That the said Gertrude Grayson, deceased, was the illegitimate daughter of the said Louiza Colbert, deceased, that her putative father was John Foster, a non citizen of the Creek Nation, and not a Creek Citizen.

Eleventh. That the said Gertrude Grayson died, intestate, without issue and never having been married, in the month of April, 1907, possessed in fee of an undivided one-half of the lands above described and leaving her surviving Cloria Grayson, known as Cloria Ross, her grandmother, and also Micy Keys her great aunt, Jim Boy Tobler, her great uncle, and the descendants of Bucher Grayson, deceased, Sampson Stidham, deceased; Friday Tobler, deceased, and Jack Tobler, deceased, her great uncles, and also the descendants of Dinah Grayson, deceased, Easy Rowe, deceased, and Minnie Grayson, deceased, her great aunts, which descendants' names and kinship appear in the petition herein.

Twelfth. That George Tobler, deceased, was a Creek Freedman, and was the father of the said Louiza Colbert.

Thirteenth. That Gloria Grayson, known also as Gloria Ross, is the mother of the said Louiza Colbert, and that the [fol. 48] said Glorida Grayson is still living and that she is a non citizen of the Creek Nation and not a Creek descendant.

Fourteenth. That the said George Tobler, the father of Louiza Colbert, was the son of Jim Tobler, known also as Tobler Stidham, that they both died many years ago.

Fifteenth. That Butcher Grayson, Sampson Stidham, Friday Tobler, Jim Boy Tobler, and Jack Tobler, were sons of the said Jim Tobler, deceased; and brothers of the said Geo. Tobler; that Dinah Grayson, Hannah Grayson, Phoebe Stephens, Easy Rowe, Minnie Grayson and Micy Keys were the daughters of the said Jim Tobler, and sisters of the said Geo. Tobler, and that they were all Creek Freedmen.

Sixteenth. That the brothers and sisters aforesaid of the said George Tobler are dead except Micy Keys.

Seventeenth. That the plaintiffs in this case are the descendants of the deceased brothers and sisters aforesaid of the said George Tobler and are related to the said Gertrude Grayson and to each other as set forth in their petition herein filed.

Eighteenth. That on January 2, 1908, prior to the death of Jim Boy Tolbert, and prior to the institution of this suit the said Jim Boy Tobler and Micy Keys sold and conveyed all of their rights, titles and interests in and to the land above described to Cloria Grayson, known also as Cloria Ross; that afterwards on January 4th, 1908, the said Cloria Grayson sold and conveyed said interests to L. A. Bell and thereafter on the 28th day of November, 1908, the said L. A. Bell, joined his wife sold and conveyed said interests to William H. Harris and James A. Harris, defendants herein.

Nineteenth. That the defendants, William Harris and James A. Harris, nor those under whom they claim, took any possession whatever of said land until sometime in 1912, after the decision of the Federal Court in the case of Brann vs. Bell, in which it was decreed that one-half [fol. 49] of the lands vested in the paternal line, and the other half in the maternal line of the allottee; that the evidence fails to show an open, adverse, continuous and hostile possession in the defendants, James A. Harris, William H. Harris, James H. Kennedy, the Quaker Oil & Gas Company, and the Ohio Cities Oil & Gas Company, or any of them, or their predecessors, in the title, prior to November 17, 1907.

Twentieth. That the defendants James A. Harris and William H. Harris are in possession of the undivided one-half of all of said lands, claiming to be the owners in fee thereof, and denying all right of the plaintiffs and intervenors therein, and keep them out of possession thereof.

Twenty-first. That the Ohio Cities Gas Company is in possession of and is producing oil and gas from a portion of said land, to wit:

East Half of Southeast Quarter of Southeast Quarter; Northwest Quarter of Southeast Quarter of Southeast Quarter; East Half of Southwest Quarter of Southeast Quarter of the Southeast Quarter; Northwest Quarter of Southwest Quarter of Southeast Quarter of the Southeast Quarter of Section 20, Township 18, Range 12, containing 37½ acres more or less.

That the said Ohio Cities Gas Company deny any and all rights of the plaintiffs and intervenors in said land and the oil and gas produced therefrom and keep the plaintiffs and intervenors out of possession thereof.

Twenty-second. That the defendants, James A. Harris and William H. Harris claim and derive whatever title they have by means conveyances from Cloria Grayson, as the maternal grandmother of Gertrude Grayson, and as the grantee of Micey Keys and Jim Boy Tobler.

Conclusions of Law

From the foregoing facts the court concludes as matters of law:

[fol. 50] First. That Cloria Grayson, also known as Cloria Ross, being a non-citizen of the Creek Nation and not a Creek descendant, took no right, title or interest in the lands in controversy as the heir of Gertrude Grayson, and she has never had any interest in said land other than the interest conveyed to her by Micy Keys and Jim Boy Tobler.

Second. That upon the allotment of said lands, on July 9, 1906, the title thereto passed to the then living Creek heirs of Nancy Colbert and Garfield Colbert as provided

by Chapter 49 of Mansfield Digest of the Statutes of Arkansas; that said heirs were Jim Colbert and Gertrude Grayson, being such heirs they each took an undivided one-half interest in said lands upon the allotment thereof.

Third. That upon the death of Gertrude Grayson in April, 1907, her undivided one-half interest in said lands descended to her surviving kindred, who were Creek Citizens or Creek descendants, in accordance with the laws of Descent and Distribution as provided in Chapter 49 of Mansfield's Digest of the Laws of Arkansas, as modified by the provisos of Section 6 of the supplemental Creek Agreement, limiting the descent of Creek Citizens and Creek descendants. And that the Creek heirs of Gertrude Grayson surviving her and their kinship and the proportional share of each, as such heirs, in the undivided one-half of the lands in question herein, are as follows, and are as agreed among the plaintiffs: Micey Keys, who is a sister of the said George Tobler, deceased, who was the father of the said Louiza Colbert, deceased, who was the mother of the said Gertrude Grayson, deceased, a 1/11 part.

Jim Boy Tobler, who was a brother of the said George Tobler, who was the father of the said Louiza Colbert, deceased, who was the mother of said Gertrude Grayson, deceased, a 1/11 part.

(Descendants of Bucher Grayson)

Isom Grayson, who was a son of Bucher Grayson, de- [fol. 51] ceased, who was a brother of the said George Tobler, deceased, a 1/33 part.

The following named children of Ceasar Grayson, deceased, who was a son of the said Bucher Grayson, deceased, to wit:

Pauline Carolina, a 1/264 part; Alice Carolina, a 1/264 part; Bertha Grayson, a 1/264 part; Gertie Carolina, a 1/264 part; Polly Grayson, a 1/264 part; Lucy Williams, a 1/264 part; Dock Grayson, a 1/264 part.

The only son of Zack Grayson, deceased, who was a son of the said Caesar Grayson, deceased, to wit: Zack Grayson, 1/264 part.

The following named children of Louisa Haynes, deceased, who was a daughter of the said Bucher Grayson, deceased, to wit:

Delilah Hutton, a 1/297 part; Sam Haynes, a 1/297 part; Alice Hunter, a 1/297 part; Rose Haynes, a 1/297 part; Rayford Hutton, a 1/297 part.

Jack Stidham, husband of Louisa Haynes, 1/99 part.

The following named children of Adaline Stedham, deceased, who was a daughter of the said Louisa Haynes, deceased, to wit: Sam Stidham, a 1/594 part; Letha Stidham, a 1/594 part.

(Descendants of Sampson Stidham)

The children of Lucy Lester, deceased, who was a daughter of Sampson Stidham, deceased, who was a brother of the said George Tobler, deceased, to wit:

Hattie Givens, a 1/99 part; George Harrison, a 1/99 part.

The following named children of Lizzie Boyce, deceased, who was a daughter of the said Lucy Lester, deceased, to wit: Jennie Boyce, a 1/495 part; Clarence Boyce, a [fol. 52] 1/495 part; Lucy Boyce, a 1/495 part; Hattie Boyce, a 1/495 part; Beatrice Boyce, a 1/495 part.

The following named children of Tamie McIntosh, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit: Joe McIntosh, a 1/231 part; Wiley McIntosh, a 1/231 part; John McIntosh, a 1/231 part; George McIntosh, 1/231 part; Rebecca McIntosh, a 1/231 part; Elzora Fields, a 1/231 part.

The following named children of Elsie McIntosh, deceased, who was a daughter of the said Tamie McIntosh, deceased, to wit: Mamie Davis, nee Nevins, a 1/1155 part; Willie Smith, a 1/1155 part; Johanna Smith, a 1/1155 part; Henry Smith, a 1/1155 part; George Smith, a 1/1155 part.

A son of Lizzie Fisher, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit: Prince Lewis, a 1/132 part.

A son of Harkness Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit: Elmore Lewis, a 1/660 part; Sarah Lewis McSwain, a 1/660 part; Lennie

Lewis, a 1/660 part; Jessie Lewis, a 1/660 part; Robert Lewis, a 1/660 part.

The following named children of Katie McIntosh, deceased, who was a daughter of the said Lizzie Fisher, deceased, to wit: Mary Manuel, a 1/396 part; Roy McIntosh, a 1/396 part; Ray McIntosh, a 1/396 part; Roxyana McIntosh, a 1/396 part.

(Descendants of Friday Tobler)

The following named children of Dave Friday, deceased, who was a son of Friday Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

Berry Friday, a 1/110 part; Louis Friday a 1/110 part; Jack Friday, a 1/110 part; Bennie Friday, a 1/110 part; Billy Friday, a 1/110 part; Katie Harrison, a 1/110 part; Julia Durant, a 1/110 part; Edward Friday, a 1/110 part. [fol. 53] The following named children of Rebecca Watley, deceased, who was a daughter of the said Dave Friday, deceased, to wit: Beacher Watley, a 1/660 part; Jack Watley, a 1/660 part; Beatrice Watley, 1/660 part; Myrtle Watley, a 1/660 part; Tim Watley (husband of Rebecca Watley), a 1/336 part.

The daughter of Anna Vans, deceased, who was a daughter of the said Dave Friday, deceased, to wit: Dorothy Grayson, a 1/110 part.

(Descendants of Dinah Grayson)

The following named children of Tommy Grayson, deceased, who was a son of Dinah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Bill Grayson, a 1/66 part; Lona Grayson, a 1/66 part; Katie Grayson, 1/66 part; Lucy Grayson, a 1/66 part; Janey Grayson, a 1/66 part; Cooper Grayson, a 1/66 part.

(Descendants of Hannah Grayson)

A son of Hannah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Dick Thursday, a 1/44 part.

The following named children of Leah Hawkins, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit: Peter Hawkins, a 1/352 part; Joe Hawkins, a 1/352

part; Sambo Hawkins, a 1/352 part; Dave Hawkins, a 1/352 part; Robert Hawkins, a 1/352 part; Mack Hawkins, a 1/352 part.

The following named children of Hagar White, deceased, who was the daughter of the said Leah Hawkins, deceased, to wit: Tommy White, a 1/1056 part; Rachie White, a 1/1056 part; Jessie Casey, a 1/1056 part.

The daughter of Willie Hawkins, deceased, who was a son of the said Leah Hawkins, deceased, to wit: Gaula Hawkins, a 1/352 part.

[fol. 54] The daughter of Sibbie Ross, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit: Patsy Harrison, a 1/44 part.

The following named children of Katie Corbray, deceased, who was the daughter of the said Hannah Grayson, deceased, to wit: Rose Corbray, a 1/132 part; Mary Corbray, a 1/132 part.

The following named children of Hannah Perry, deceased, who was a daughter of the said Katie Corbray, deceased, to wit: Nettie Perry, a 1/528 part; Esther Lee Perry, a 1/528 part; Willie May Perry and Lucile Perry, a 1/528 part (each).

(Descendants of Phoebe Stephens)

The following named children of Phoebe Stephens, deceased, who was a sister of the said George Tobler, deceased, to wit: Joe Stephens, a 1/44 part; Morris Stephens, a 1/44 part.

The following named children of Sonny Grayson, deceased, who was the son of Phoebe Stephens, deceased, to wit: Joe Grayson, a 1/220 part; Leah Cully, a 1/220 part; Phoebe White, a 1/220 part; Micey Goff, a 1/220 part.

A daughter of Emma Rowe, deceased, who was a daughter of the said Sonny Grayson, deceased, to wit: Esther Rowe, a 1/220 part.

A son of Leah Jamison, deceased, who was a daughter of the said Phoebe Stephens, deceased, to wit: Monday Jamison, a 1/88 part.

The following named children of Henry Murrell, deceased, who was the son of Leah Jamison, deceased, to wit: Jeff Murrell, a 1/264 part; Percilla Murrell, a 1/264 part; Lou Daisy Murrell, a 1/264 part.

(Descendants of Easy Rowe)

The following named children of Easy Rowe, deceased, [fol. 55] who was a sister of the said George Tobler, deceased, to wit: Jim Samuels, a 1/55 part; Amy Wilson, a 1/55 part.

A son of Cloa Marshall, deceased, who was a daughter of the said Easy Rowe, deceased, to wit: Thomas Boone, a 1/165 part.

The following named children of Celia Frowe, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit: Wm. London, a 1/495 part; Fred Frowe, a 1/495 part; Georgia Frowe, a 1/495 part.

The following named children of Katie McKillop, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit: Florence McKillop, a 1/825 part; James McKillop, a 1/825 part; Martha McKillop, a 1/825 part; Victoria Davis, a 1/825 part; Annie Davis, a 1/825 part.

The following named children of Sampson Brown, deceased, who was a son of the said Easy Rowe, deceased, to wit: Johnny Brown, a 1/440 part; Wallace Brown a 1/440 part; Nellie Brown a 1/440 part; Edward Brown, a 1/440 part; Russell Brown, a 1/440 part; Harry Brown, a 1/440 part; John Brown, a 1/440 part; Paul Brown, a 1/440 part.

A daughter of Eliza Jackson, deceased, who was a daughter of Rose Alexander, deceased, who was a daughter of the said Easy Rowe, deceased, to wit: Ivy Grayson, a 1/55 part.

(Descendants of Minnie Grayson)

The following named children of Minnie Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Dilsy Hope, a 1/44 part; Richard Grayson, a 1/44 part; Jack Grayson, a 1/44 part.

The following named children of Dinah Tucker, deceased, who was a daughter of the said Minnie Grayson, deceased, to wit: Mima Byrd, a 1/132 part; Betty Tucker, a 1/132 part.

The following named children of Mary Jones, deceased, [fol. 56] who was a daughter of the said Dinah Tucker, deceased, to wit: Luther Jones, a 1/528 part; Alice Jones, a 1/528 part; Robert Jones, a 1/528 part; Wyatt Jones, a 1/528 part.

(Descendants of Jack Tobler)

A daughter of Jack Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit: Lizzie Randall, a 1/22 part.

A daughter of Jerry Stedham, deceased, who was the son of the said Jack Tobler, deceased, to wit: Rachel Edwards, a 1/44 part.

A son of Cora Island, deceased, a daughter of Jerry Stedham, deceased, to wit: Johnnie Island, a 1/44 part.

Fourth

That James A. Harris and William H. Harris are the owners of the interests of Micey Keys and Jim Boy Tobler as above set forth, that is to say, of 2/11 of the undivided one-half of the lands in controversy, that the descendants and the widow of Jim Boy Tobler, Nellie Harris, have no interest in said lands. That the above named kindred and heirs of Gertrude Grayson, except Micey Keys and Jim Boy Tobler, are the owners in fee and entitled to the immediate possession of the respective shares and portions of the undivided one-half of said lands as above set forth, equaling in all 9/11 of the undivided half of said lands, and that James Brann is the owner in fee of an undivided one-half of the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, in Township Eighteen, North of Range Twelve East.

Fifth

That the plaintiffs and intervenors should recover possession of their respective undivided shares and interests in said lands as above set forth.

Sixth

{fol. 57} That an accounting should be had of the oil and gas and the proceeds thereof taken from said lands by the defendants James A. Harris and William H. Harris, and that they should account to the plaintiffs and intervenors therefor in the proportion of their respective interests in

said lands as above set forth, and as found upon the taking of said account.

Seventh

That the Ohio Cities Gas Company should account and pay over to the plaintiffs and intervenors as their interests appear herein for one-eighth of the oil and gas or the proceeds thereof taken by it from said lands since the bringing of this suit.

Eighth

That the plaintiffs and intervenors are entitled to a partition of the Southwest Quarter of the Northeast Quarter of and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen North of Range Twelve, East.

Decree

It is therefore considered, adjudged and decreed by the Court that James Brann is the owner in fee of an undivided one-half of Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen, North of Range Twelve East.

That James A. Harris and William H. Harris are the owners in fee each of an undivided 1/22 of all the lands in controversy herein, to wit:

Lot Two and the Northeast Quarter of the Northeast [fol. 58] Quarter and the Northwest Quarter of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, in Township 17 North of Range 12 East, and the Northwest Quarter of the Southwest Quarter of Section17, and the East Half of the Southeast Quarter of Southeast Quarter and the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the East Half of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the South-

east Quarter of Section 20, all in Township 18 North of Range 12 East, and all in Creek County, Oklahoma.

The Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter to Section 29, and the North Half of the Northeast Quarter of Section 30, all in Township 18 North of Range 12 East, in Creek County, Oklahoma.

That the intervenors and the following named plaintiffs are the owners in fee respectively of undivided interests in all the land last above described and that the undivided interest of each of them in said lands is as follows:

Isom Grayson, 1/66; Pauline Carolina, 1/528; Alice Carolina, 1/528; Bertha Grayson, 1/528; Gertie Carolina, 1/528; Polly Grayson, 1/528; Lucy Williams, 1/528; Dock Grayson, 1/528; Zack Grayson, 1/528; Jack Stitham, 1/198; Delilah Hutton, 1/594; Sam Haynes, 1/594; Alice Hunter, 1/594; Rose Haynes, 1/594; Rayford Hutton, 1/594; Sam Stitham, 1/1188; Leatha Stitham, 1/1188; Hattie Givens, 1/198; George Harris, 1/198; Jennie Brooks, 1/990; Clarence Brooks, 1/990; Lucy Brooks or Boyce, 1/990; Hattie Brooks or Boyce, 1/990; Beatrice Brooks or Boyce, 1/990; Joe McIntosh, 1/462; Wiley McIntosh, 1/462; John McIntosh, 1/462; George McIntosh, 1/462; Rebecca Turner, 1/462; Elzora Fields, 1/462; Mamie Davis, 1/2310; Willie Smith, 1/2310; Johanna Smith, 1/2310; Henry Smith, [fol. 59] 1/2310; George Smith, 1/2310; Prince Lewis, 1/264; Eddie Lewis, 1/264; Sarah McSwain, 1/1320; Jesse Lewis, 1/1320; Elmore Lewis, 1/1320; Robert Lewis, 1/1320; Lennie Lewis, 1/1320; Mary Manuel, 1/792; Roy McIntosh, 1/792; Roxyana McIntosh, 1/792; Berry Friday, 1/220; Louis Friday, 1/220; Jack Friday, 1/220; Bennie Friday, 1/220; Billy Friday, 1/220; Katie Harrison, 1/220; Julia Durant, 1/220; Edward Friday, 1/220; Dorothy Grayson, 1/220; Tim Watley, 1/660; Beecher Watley, 1/1320; Jack Watley, 1/1320; Beatrice Watley, 1/1320; Myrtle Watley, 1/1320; Billy Grayson, 1/132; Leona Grayson, 1/132; Katie Grayson, 1/132; Lucy Grayson, 1/132; James Grayson, 1/132; Cooper Grayson, 1/132; Dick Thursday, 1/88; Peter Hawkins, 1/704; Joe Hawkins, 1/704; Sambo Hawkins, 1/704; Dave Hawkins, 1/704; Robert Hawkins, 1/704; Mack Hawkins, 1/704; Willie Hawkins, 1/704; Tommy

White, 1/2112; Rachie White, 1/2112; Jessie Casey, 1/2112; Patsy Harrison, 1/88; Rose Corbray, 1/264; Mary Corbray, 1/264; Nettie Perry, 1/1056; Ester Lee Perry, 1/1056; Willie May Perry, 1/1056; Lucile Perry, 1/1056; Joe Stephens, 1/88; Morris Stephens, 1/88; Joe Grayson, 1/440; Leah Cully, 1/440; Phoebe White, 1/440; Micey Goff, 1/440; Esther Rowe, 1/440; Monday Jamison, 1/176; Jeff Murrell, 1/528; Percilla Murrell, 1/528; Lou Daisy, 1/528; William London, 1/990; Fred Froe, 1/990; Georgia Froe, 1/990; Florence McKellop, 1/1650; James McKellop, 1/1650; Martha McKellop, 1/1650; Victoria Davis, 1/1650; Anna Davis, 1/1650; Thomas L. Boone, 1/330; Ivy Grayson, 1/110; Jim Samuels, 1/110; Amy Wilson, 1/110; Johnny Brown, 1/880; Wallace Brown, 1/880; Nellie Brown, 1/880; Edward Brown, 1/880; Russell Brown, 1/880; Harry Brown, 1/880; John Brown, 1/880; Paul Brown, 1/880; Dilsey Hope, 1/88; Richard Grayson, 1/88; Jack Grayson, 1/88; Mima Byrd, 1/264; Betty Tucker, 1/264; Luther Jones, 1/1056; Robert Jones, 1/1056; Wyatt Jones, 1/1056; Alice Jones, 1/1056; Elizabeth Randel, 1/44; Rachel Edwards, 1/88; Johnie Island, 1/88. And the titles and interests of the various parties in said lands as above set forth are hereby confirmed.

[fol. 60] It is further adjudged and decreed by the Court that the aforesaid plaintiffs and intervenors have and recover possession of their respective interests in said lands and that they have restitution therefor.

It is further adjudged and decreed that the plaintiffs are entitled to a portion of the partition of the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen, North of Range Twelve East.

And that said land be partitioned according to the interests of the parties therein as hereinbefore set forth and confirmed.

It is further ordered that R. N. Whittlesey, Waldo Huycke and L. S. Bayrell be, and they are hereby appointed commissioners to make partition of said land last above described in accordance with the interests of the parties therein as hereinbefore set forth, and if they are unable to make partition of said premises without manifest injury

they shall make a valuation of said premises and report to this Court their acts and doing hereunder as provided by law on or before the 10th day of March, 1920.

It is further ordered and adjudged that the defendants, James A. Harris and William H. Harris, on or before the 15th day of March, 1920, make an account to this Court of the oil and gas and the proceeds thereof, taken or received by them from the lands in controversy herein, showing in full the amount received therefor and such necessary expenses and costs of producing the same as they have incurred.

It is further ordered and adjudged that the Ohio Cities Gas Company, on or before the 18th day of June, 1920, makes an account to this Court of the oil and gas taken by them from the lands in controversy, or the proceeds thereof showing the full amount received therefor and such [fol. 61] necessary expenses and costs of producing the same as they have incurred.

The question of the appointment of a receiver herein is deferred to be considered by the Court upon further application.

To which judgment and decree the defendants except.

Dated at Sapulpa, Oklahoma, February 21, 1920.

Lucian B. Wright, Judge.

In Supreme Court of Oklahoma.

No. 11654

James A. Harris et al., Plaintiffs in Error,

vs.

Isom Grayson et al., Defendants in Error

Petition in Error

And now come James A. Harris, William H. Harris and Ohio Cities Gas Company, hereinafter styled plaintiffs in error, and complaining of Isom Grayson and all other plaintiffs and defendants in the court below, numbering about one hundred and fifty persons, hereinafter styled

defendants in error, and respectfully show to the Court that on, to wit, the 21st day of February, 1920, the District Court of Creek County, in a case then and there pending, wherein Isom Grayson and one hundred and fifty other persons were plaintiffs and these petitioners in error and others were defendants, rendered judgment against these plaintiffs in error and in favor of said defendants in error, awarding to them, wrongfully and erroneously, nine-elevenths (9/11) of two certain allotments of land lying in Creek County, Oklahoma, and known as the Nancy Colbert allotment and the Garfield Colbert allotment, whereby and by reason of which judgment rendered by said District [fol. 62] Court against these petitioners in error, as aforesaid, they feel justly aggrieved and present this their petition in error to this Court, to which is attached a true and correct case-made, and present the following:

(Filed in Supreme Court of Oklahoma August 17, 1920. William M. Franklin, Clerk)

In Supreme Court of Oklahoma

Assignment of Errors

1. The court erred in overruling the motion for a new trial by plaintiffs in error.

2. The court erred in refusing to sustain the demurrer of plaintiffs in error to the petition of defendants in error.

3. The court erred in refusing to render judgment for plaintiffs in error on the pleadings.

4. The court erred in refusing to sustain plaintiffs in error's demurrer to the evidence of defendants in error.

5. The court erred in refusing to render judgment on the whose case in favor of plaintiffs in error.

6. The findings of fact by the court are not sustained by sufficient evidence.

7. The decision and judgment of the court are not sustained by sufficient evidence.

8. The findings of fact and conclusions of law and the decree of the court are not supported by sufficient evidence and are contrary to the evidence.

9. The decision and judgment of the court are contrary to law.

10. The court erred in admitting evidence offered by defendants in error over the objection and exceptions of plaintiffs in error because the same was incompetent, irrelevant and immaterial.

[fol. 63] 11. The court erred in refusing to admit competent and material evidence offered by plaintiffs in error.

12. The court erred in admitting as evidence a printed volume designated as the index to the final rolls of citizens and Freedmen of the Five Civilized Tribes of the Indian Territory as compiled and printed under authority conferred by Act of Congress without testimony to identify the parts which were material and which testimony was admitted over the objection of plaintiffs in error.

13. The court erred in refusing to decide and hold that on the death of Gertrude Grayson, the title to the land in controversy herein became vested in her maternal grandmother, Gloria Grayson.

14. The court erred in refusing to decide and hold that the cause of action, as stated and set up by defendants in error in their pleadings, was and is barred by the statute of seven years limitations.

15. The court erred in refusing to decide the issues in favor of plaintiffs in error and to render judgment in their favor accordingly.

16. The court erred in allowing amendments to the case made, which amendments are set out and shown in said case-made between pages 769 and 770 over the objection of counsel for plaintiffs in error.

Wherefore, plaintiffs in error pray the Court to review the trial of this cause in the District Court of Creek County, and to correct the many errors committed by said trial

court, and reverse said judgment and here render judgment in favor of plaintiffs in error.

Robert F. Blair, G. Earl Shaffer, Attorneys for Plaintiffs in Error.

[fol. 64] IN SUPREME COURT OF OKLAHOMA

#11654

JAS. A. HARRIS et al.

vs.

ISOM GRAYSON et al.

ORDER GRANTING REHEARING—May 29, 1923

And now on this day it is ordered by the court that rehearing be granted in the above cause and the same is hereby resubmitted as of this date.

IN SUPREME COURT OF OKLAHOMA

#11654

J. A. HARRIS et al.

vs.

ISOM GRAYSON et al.

ORDER READOPTING OPINION OF MILLER, J.—NOV. 15, 1927

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the opinion of Miller, J., handed down Dec. 19, 1922, in the above cause, sets out the law, on the one controlling proposition, as to whether or not the original opinion filed Dec. 19, 1922, in said cause is final and conclusive on the question therein adjudged as determining the rights of the parties on the question of the statute of limitation, and

should be by this court readopted, and ordered filed as ... opinion of the court herein, and it is hereby so ordered and adjudged.—Opinion by Branson, J.

[fol. 65] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

No. 11654

JAMES A. HARRIS et al., Plaintiffs in Error,

vs.

ISOM GRAYSON et al., Defendants in Error

Syllabus

L. The syllabi and text in this cause found in the opinion filed December 19th, 1922, is adopted as the law of this case.

Error from the District Court of Creek County, Oklahoma

Hon. Lucien B. Wright, Judge

Reversed and Remanded with Instructions

[fol. 66] OPINION—Filed Nov. 15, 1927

Opinion by BRANSON, C. J.:

On December 19, 1922, there was filed in this cause an opinion of this court, concurred in by Justices Harrison, Johnson, Kennamer, Nicholson, and Cochran, which opinion was written by Justice Miller, then a member of this court.

The two principal questions before this court, as raised by the petition in error are argued in the brief filed by counsel here; First: The statute of limitation which the plaintiffs in error claimed barred the defendants in error from recovering even if the defendants in error had ever inherited any interest in the real estate. The opinion filed on the above date was written solely upon this question and held that the statute of limitation began to run prior

to November 16, 1907, under the law then in force in that part of the State of Oklahoma then known as the Indian Territory. The statute of limitations in force at that time provided that a plaintiff could not bring any suit "for the recovery of any land, tenements, or hereditaments" unless said suit was brought within seven years next after his, her or their rights to commence, have, or maintain such suit * * * shall have come, fallen or accrued. That since the rights of the plaintiffs came or accrued to them more than seven years prior to the institution of the suit and prior to admission of the State into the Union they were barred by that statute of limitation.

The other question was whether or not the priviso to Section 6 of the supplemental Creek agreement of June 30, 1902 (32 Stat. 500) extended any further than a first descent. On the presentation of a petition for rehearing of that cause, this court deemed a construction of said proviso of such interest and public concern as to require an opinion directly on that question. Such an opinion was written and the other question, supra, not discussed. The said priviso to said Section 6 of the said supplemental Creek agreement is:

[fol. 67] "Provided that only citizens of the Creek nation, male and female, and their Creek descendants shall inherit lands of the Creek nation."

The opinion of this court on that question is reported — Okla., page —; 216 Pac., 446. This opinion of this court on the said proviso served only one useful purpose and that was it furnished an opportunity for the Supreme Court of the United States to determine whether the said proviso extended to a second, third, etc., descent without any limitation. That court so determined, which rated as a reversal of the opinion of this court, cited above on that question.

This brief history of this suit is given in explanation of the reason this case has not been disposed of long since. It is now before this court on whether or not the original opinion filed herein is final and conclusive on the question there adjudged by that opinion as determining the rights of the parties on the question of the statute of limitation.

This court has examined the authorities cited by counsel and feels that the original opinion filed in this court sets

out the law on that one controlling proposition and the said opinion is by this court readopted, and ordered filed as the opinion of the court herein.

Mason, V. C. J., Harrison, Phelps, Lester, Riley and Hefner, JJ., concur.
Clark, J., dissents.
Hunt, J., disqualified.

[fol. 68] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

No. 11654

JAMES A. HARRIS et al., Plaintiffs in Error,

versus

ISOM GRAYSON et al., Defendants in Error

OPINION—Filed Dec. 19, 1922; adopted and refiled Nov. 15, 1927

Syllabus

1. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her, or their rights to commence, have, or maintain suit shall have come, fallen, or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements, or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed. * * *.

   Section 4471, Mansfield's Digest of the Laws of Arkansas.

2. Under the foregoing section, a person's title to lands, tenements or hereditaments has accrued simultaneously with acquiring such title either by purchase or inheritance.

3. If more than seven years after acquiring title such person, or his or her heirs, bring an action either in law or equity to recover said lands, and the statute of limitations is plead as a bar of the right of action, the burden of proof rests upon the plaintiff to show facts that take it out of the bar of the statute of limitations.

4. Where a cause of action arose prior to statehood and while the Arkansas law was in force in the Indian Territory and the Arkansas Statute of Limitations began to run, the change to statehood does not operate to apply a new statute of limitations. The statute as fixed by Mansfield's Digest of the Statute of Arkansas is the controlling statute.

5. The lands sought to be recovered in this action are located in what was formerly known as the Indian Territory and the cause of action accrued in July, 1906, while the Arkansas laws were in force in said Indian Territory; this action was not commenced until August 4, 1917, Held, the action was barred by the seven-year statute of limitations set forth in Section 4471, supra.

Error from the District Court of Creek County, Oklahoma

Hon. Lucien B. Wright, Judge

[fol. 69] Action by Isom Grayson et al. against James A. Harris et al. to recover certain lands located in Creek County, Oklahoma. Judgment for plaintiffs. Defendants appeal.

Reversed and Remanded with Instructions

[fol. 70] Opinion of the Court by MILLER, J.:

This is an action in ejectment commenced in the District Court of Creek County by Isom Grayson and approximately one hundred and fifty others, as plaintiffs, against James A. Harris and seven others, as defendants, to recover two certain tracts of land situated in Creek County, Oklahoma, each containing one hundred and sixty acres more or less; one being the allotment of Nancy Colbert

and the other being the allotment of Garfield Colbert. Nancy Colbert was a Creek Freedman, enrolled as such opposite roll number 5641, a female, age three years. She was enrolled as of date of March 15, 1906. The enrollment record shows that she died in the Spring of 1900. The petition filed by the plaintiffs states that she died March 1, 1900, and left surviving her her father, Jim Colbert, and her mother, Louisa Colbert. The petition further states that her mother, Louisa Colbert, died March 7, 1900. The land was allotted in the name of Nancy Colbert on July 9, 1906.

Garfield Colbert was a Creek Freedman and enrolled as such on March 15, 1906, opposite roll number 5640, a male, six years of age. The enrollment record shows that he died in the Spring of 1900. The petition states that he died in June 1900. That he left surviving him, as his heirs, Jim Colbert his father, and Gertrude Grayson, a half-sister, who was the illegitimate daughter of Louisa Colbert by John Foster, a non-citizen. The tract referred to as his allotment was allotted in the name of Garfield Colbert on July 9, 1906.

Jim Colbert was enrolled in September, 1898, as a Creek Freedman, opposite roll number 2645, a male, age thirty-six years. The petition further states that Gertrude Grayson was enrolled opposite roll number 5684 of the Creek Freedman rolls and that she died in April, 1907, intestate and without issue.

The plaintiffs in their petition claim that on July 9, 1906, when said lands were allotted in the names of Nancy Colbert and Garfield Colbert that Jim Colbert and Gertrude Grayson were their only surviving Creek heirs at law, and that each became the owner of an undivided one-half of said lands. It is conceded that James Brann, one of the defendants herein, is the owner of an undivided one-half interest in each of said allotments and his undivided inter-
[fol. 71] est is not in controversy in this action.

It is further admitted that George Tobler was the maternal grandfather of Gertrude Grayson and that he died about 1890. That Cloria Tobler was the maternal grandmother of Gertrude Grayson and the widow of George Tobler. Cloria Tobler is otherwise known as Cloria Grayson and she is not a citizen of the Creek Nation.

The plaintiff's petition alleges that Micey Keys is a Creek citizen and the sister of George Tobler who was the maternal grandfather of Gertured Grayson and the other plaintiffs all of whom are alleged to be Creek citizens and descendants of the other brothers and sisters of the said George Tobler.

The record shows that Micey Keys and Jim Tobler conveyed their interest in the land to Cloria Grayson and Cloria Grayson conveyed all of her interest to L. A. Bell and by mesne conveyances defendants, James A. Harris and William H. Harris, acquired whatever interest Cloria Grayson had.

The defendants, Harris and Harris, as their defense, claim to be the absolute owners of an undivided one-half interest in and to all of said lands, claiming that Cloria Grayson inherited from Gertrude Grayson. They also plead the statute of limitations as against the plaintiffs and each of them.

The case was tried to the court without a jury which resulted in a judgment decreeing that the plaintiffs inherited the land from Gertrude Grayson and that they were the owners thereof, except that defendants Harris and Harris were the owners of the interest inherited by Micey Keys and Jim Tobler. Harris and Harris appeal and appear here as plaintiffs in error.

Numerous assignments of error have been made by plaintiffs in error, but it will not be necessary to set them out in detail here. These various assignments of error have been discussed under seven propositions. We will first consider Proposition Number Five as set out in the brief of plaintiffs in error, which reads:

[fol. 72] "Point Five

The plaintiff's cause of action, if any they have, to recover an undivided one-half interest in said land, or any other interest, accrued prior to November 16, 1907, the date Oklahoma was admitted as a state, and is therefore barred by the Arkansas seven-year statute of limitations, embodied in Section 4471 of Mansfield's Digest.

Section 4471, Man-field's Digest of the Laws of Arkansas, is as follows:

"No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her, or their rights to commence, have, or maintain such suit shall have come, fallen, or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements, or hereditaments shall be had and sued within seven years, next after said seven years shall have passed. * * *"

Here follows a proviso that if any person at the time their right to maintain the action first accrued were minors, femme covert or non compos mentis, they would have three years after the removal of such disability to bring their action, but as it is not plead- or contended that, and there is no proof in the record, that Gertrude Grayson or any of the plaintiffs in the court below were under such disabilities, it is not necessary to consider the proviso.

It has been settled by the decisions of this Court beyond all controversy that where a cause of action arose prior to statehood and the Arkansas Statute of Limitations began to run, the change to statehood does not operate to apply a new statute of limitations. The statute as fixed by Manfield's Digest of the Statutes of Arkansas, when once it has begun to run, is the controlling statute. Foreman vs. Marks (Okla.) 209 Pac. 1040; Patterson vs. Rousney, 58 Okla. 185, 169 Pac. 636; Davis v. Foley, 60 Okla. 87, 159 Pac. 646; 1917 A, L. R. A. 187; Maine et al. vs. Edmonds, 58 Okla. 645, 160 Pac. 483; Kelsay vs. Kelsay Land Co. et al. 64 Okla. 291; 166 Pac. 173; Bilby vs. Diamond et al. (Okla.) 174 Pac. 758.

The next question to consider is, when did the statute of limitations begin to run?

As has already been stated the plaintiffs in the court below allege in their petition that when the lands were allotted on July 9, 1906, in the names of Nancy Colbert and [fol. 73] Garfield Colbert, that Jim Colbert and Gertrude Grayson were their only surviving Creek heirs at law and that each (Jim Colbert and Gertrude Grayson) became the owners of an undivided one-half of said lands. This means that Gertrude Grayson's title accrued to her on July 9, 1906. The last part of the foregoing quotation from Section 4471, supra, says:

"And all suits either in law or equity, for the recovery of any lands, tenements, or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed, * * *"

It will be observed that "title or cause of action" is used in this disjunctive. It does not say "title and cause of action" joining the two together, but it disjoins them, or separates the two, therefore the section as applied in this case may be read by leaving out the words "or cause of action." It would then read as follows:

"And all suits either in law or equity, for the recovery of any lands, tenements, or hereditaments shall be had and sued with- seven years next after title accrued, and no time after said seven years shall have passed."

The first part of said Section 4471, supra, says:

"That no person or persons, or their heirs, shall maintain the suit."

That covers the question presented in this case. Neither Gertrude Grayson, nor her heirs, shall have, sue or maintain any action or suit either in law or equity for the recovery of any lands, tenements, or hereditaments but within seven years next after her title accrued. That is the title of Gertrude Grayson.

The phrase "or cause of action" therein used makes provision for an entirely different contingency than is presented here. A person may have been vested with the title to a tract of land for ten or more years and then put a tenant on the land who may go into possession as a tenant, but thereafter assert title and ownership. In this instance the latter phrase "or cause of action accrued" would apply. The cause of action would accrue when the tenant asserted ownership. But when a person acquires title to real estate either by purchase or inheritance, their "title" has accrued simultaneously with acquiring it within the meaning of said Section 4471, supra. If more than seven years after acquiring title such person, or his or her [fol. 74] heirs, bring an action either in law or equity to recover said lands, and the statute of limitations is pled-

as a bar of the right of action, the burden of proof rests upon the plaintiff to show facts that take it out of the bar of the statute of limitations. In McNeil vs. Garland & Nash, 27 Ark. 343, paragraph one of the syllabus reads:

"Where a plea of the Statute of Limitation, in bar of the right of action, is traversed, the burden of proof is on the plaintiff to show both a cause of action, and the suing out of process within the period mentioned."

This case was decided by the Supreme Court of Arkansas at the December term of court, 1871, and it applies to the statute of limitations of Arkansas. Under the well-known rules of construction, when the Arkansas law was put in force in the Indian Territory the construction theretofore placed upon such laws by the Supreme Court of Arkansas were likewise adopted and put in force in the Indian Territory.

The parties in their briefs have made repeated reference to the question of color of title and adverse possession, but as was said in the case of Foreman vs. Marks, supra:

"It will be observed that under the foregoing section of the statute it is not a question of possession under color of title, but the statute provides that the action must be commenced within seven years next after the right to commence or maintain the suit shall have accrued."

In this case the question is, when did the title accrue under which the plaintiffs are asserting their ownership and right of action? The title accrued on July 9, 1906, and the action was barred within seven years next thereafter unless the plaintiffs plead and prove a state of facts which either relieves them from the bar of the statute, or toll the statute. The defendants in error have not pointed out anything in either the pleadings or the proof that relieves them from the statute of limitations. It is not even suggested that the lands were restricted or that Gertrude Grayson or the plaintiffs in the lower court were under any disability of any kind that would prevent the statute of limitations from beginning to run. In the case of Schrimpscher et al. vs. Stockton, et al. 183 U. S. 290, 46 L. Ed. 203, we [fol. 75] quote from the syllabus as follows:

"The heirs of a Wyandotte Indian to whom, as an incompetent, was allotted a tract of land, under the treaty of

January 31, 1855, between the United States and the Wyandotte Indians, are bound to institute ejectment against those claiming to hold such land adversely under a grant from such incompetent within the period specified by the statute of limitations, after the date of ratification of the treaty of February 23, 1867, removing all restrictions upon sales of lands patented to incompetent Wyandottes which should thereafter be made.

3. A deed executed by an Indian patentee under the treaty of January 31, 1855, between the United States and the Wyandotte Indians, valid upon its face, in which the grantor covenanted that he was seized in fee simple, had good right to sell the same, that it was free from encumbrance, and that he would warrant and defend the title unto the grantees against the claims of all persons,—constitutes color of title in the grantees, who paid value therefor and had no notice of any defect in the title of their grantor, although the patentee was classed as an incompetent under such treaty, and took under a patent which provided that the land should never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior.

4. The failure of the Secretary of the Interior to confirm or avoid a sale of land by an incompetent Indian in violation of the treaty of January 31, 1855, between the United States and the Wyandotte Indians, does not prevent the statute of limitations from beginning to run against the right of his heirs to maintain ejectment against his grantees at the date of ratification of the treaty of February 23, 1867, removing all restrictions upon sales of land patented to incompetent Wyandottes which should thereafter be made, and authorizing the Secretary of the Interior to investigate and confirm or avoid such sales theretofore made."

The plaintiffs in error further contend that the evidence fails to show that the plaintiffs in the court below are the same persons who are enrolled on the Creek Freedman rolls. They set forth in their brief, as a concrete example, the failure of the testimony to identify the plaintiff, Isom Grayson, as the same Isom Grayson enrolled on the Creek Freedman rolls, wherein they say:

"Let us take the first name, Isom Grayson, to whom the court below awarded 1/33 part of this land (C. M. p. 736). We find this information: "No. 807, Name, Isom Grayson, age 30, sex M., Census card No. 224." But what does this prove? That proves that a male person by the name of Isom Grayson was enrolled on the Creek Freedman roll opposite No. 807, and that the number of the census card upon which further information appeared was 224. But that does not prove that he is one of the plaintiffs in this case, or that the plaintiff, Isom Grayson, is the same Isom Grayson enrolled opposite that roll number as a Creek Freedman. There is nothing at all in this [fol. 76] record to identify the two persons as being the same one. If the court will read his testimony, beinning at page 170 and ending at page 185 of the record, it will be seen that he does not even claim that his roll number is 807. Counsel for plaintiffs could only prove that fact by the census card plus the testimony of the person himself, and they omitted to do that."

We have examined the record and think this contention is well-founded and applies not only to plaintiff, Isom Grayson, but also to the other plaintiffs in the court below. However, as the action of the plaintiffs in the court below was barred by the statute of limitations and they cannot maintain this suit, it will not be necessary to go into this question or any of the other questions presented by the plaintiffs in error.

The judgment of the trial court is reversed and this cause is remanded to the trial court with instructions to vacate the judgment appealed from and render judgment in favor of the plaintiffs in error, confirming their title in and to an undivided one-half interest in said lands as against all of the defendants in error.

Harrison, Johnson, Kennamer, Nicholson and Cochran, JJ., concur.

[fols. 77-83] Petition for rehearing, covering seven pages, filed Nov. 29, 1927, omitted from this print. It was denied and nothing more by order February 28, 1928.

[fol. 84] IN SUPREME COURT OF OKLAHOMA

#11,654

HARRIS et al.

vs.

GRAYSON

ORDER DENYING REHEARING—Feb. 28, 1928

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be and the same is hereby denied.

[fol. 85] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Mar. 30, 1928

To the Honorable Fred Branson, Chief Justice of the Supreme Court of the State of Oklahoma, and to the Associate Justices of said court:

Come now Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor, Zack Grayson, a minor, by Mont Carolina, the next friend of said minors, Delilah Hutton, Sam Haynes, Alice Hunter, Rosa Haynes, Reyford Hutton, Sam Stidham, Letha Stidham, Hattie Givens, George Harrison, Jennie Boyce, a minor, Clarence Boyce, a minor, Lucy Boyce, a minor, Hattie Boyce, a minor, Beatrice Boyce, a minor, by George Harrison, the next friend of said minors, Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, nee Nevins, Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jesse Lewis, Elmore Lewis, a minor, Robert Lewis a minor, Wil-

liam Lewis, Jr., a minor, Lennie Lewis, a minor, by R. J. Dixon, the next friend of said minors, Mary Manuel, Roy McIntosh, Roxyann McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor, Jack Watley, a minor, Beatrice Watley, a minor, Myrtle Watley, a minor, by Jim Watley, the next friend of [fol. 86] said minors, Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey Grayson Cooper Grayson, a minor, by Billy Grayson, his next friend, Elsie Edwards, Sab Tobler, Dick Tobler, Roxanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor, Lula Tobler, a minor, Pleas Tobler, a minor, Ida Tobler, a minor, by Lewis Adams, the next friend of said minors Mariah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe Hawkins, Sambo Hawkins, Dave Hawkins, Robert Hawkins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her next friend, P. J. Shinn, Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Perry Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell, a minor, Percilla Murrell, a minor, Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors, Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgia Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor, Annie Davis, a minor, by J. M. Glass, the next friend of said minors, Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Harry Brown, John Brown, Paul Brown, Rose Manuels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mima Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones, Alice Jones, Plaintiffs in Error in the above case and Defendants in Error in the court below, and would show unto this Honorable Court that in the record and proceedings and in the rendition of the decree in the above cause by the Supreme Court of the State of Oklahoma, in the said suit between the above named Plaintiffs in Error and the above named Defendants in Error,

manifest error has occurred, greatly to their damage, whereby petitioners feel aggrieved.

[fol. 87] That in the record and proceedings it will appear that there was drawn in question the validity of the Constitution and Statutes of the United States and of a treaty of the United States and the decision was against the validity; that the Federal questions particularly involved are:

That the Court erred in its construction and application of Section 4471, Mansfield's Digest of the Laws of Arkansas, extended to and put in force in the Indian Territory by Section 31, Act of May 2, 1890, Chapter 182, 26 Stat. at L. 81.

Wherefore petitioners pray that their appeal be allowed and that a proper transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said Court in such cases made and provided, that the same may be inspected and corrected as required by law, and justice should be done.

Neff & Neff, Watts & Broadus, Rainey, Flynn, Green & Anderson, Attorneys for Defendants in Error.

Writ of Error allowed, as prayed for, upon the giving of bond by Defendants in Error in the sum of Five Hundred ($500.00) Dollars.

Dated March —, 1928.

—— ——, Chief Justice of the Supreme Court of Oklahoma.

Attest: Jessie E. Moore, Clerk Supreme Court of Oklahoma, by —— ——, Deputy.

[fol. 88] In Supreme Court of Oklahoma

[Title omitted]

Order Allowing Writ of Error—Filed Mar. 30, 1928

The above-entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from

the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter:

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

James I. Phelps, Acting Chief Justice of the Supreme Court of the State of Oklahoma.

Attest: Jessie E. Moore, Clerk of Supreme Court, State of Oklahoma, by Jessie E. Moore. (Seal.)

[File endorsement omitted.]

[fol. 89] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

WRIT OF ERROR—Filed Mar. 30, 1928

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Justices of the Supreme Court of the State of Oklahoma, Greetings:

Because in the record and proceedings and in the rendition of the judgment of the above entitled cause which is now before you or some of you, between Isom Grayson and others, Plaintiffs, and James A. Harris and others, Defendants, and your Court being the highest court of said State having the jurisdiction of the cause, there was drawn in question the validity and construction of Section 4471, Mansfield's Digest of the Laws of Arkansas, extended, adopted and put in force in the Indian Territory by virtue of Section 31, Act of May 2, 1890, Chapter 182, 26

Stat. at L. 81, and your decision was against its validity; and whereas, there is manifest error in said decision to the damage of Isom Grayson and others, Plaintiffs in Error, and whereas, we are willing that if there is error it should be duly corrected, we command you, therefore, if judgment be given therein, that you send under seal of your Court the record and proceedings in said cause to the Supreme Court of the United States together with this writ, within such time as may be necessary in order that you have the same at Washington on the 29th day of April, [fol. 90] 1928, that the record may be then inspected by the Supreme Court of the United States to be then and there held in order that justice may be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 30th day of March, 1928.

Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma. (Seal of the United States District Court, Western District of Oklahoma.)

The above writ is allowed by James I. Phelps, Acting Chief Justice of the Supreme Court of the State of Oklahoma.

[fols. 91 & 92] Citation, in usual form, showing service on Robert F. Blair et al., filed March 30, 1928, omitted in printing.

[fols. 93 & 94] Bond on writ of error for $500.00 approved and filed March 30, 1928, omitted in printing.

[fol. 95] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Mar. 30, 1928

Come no Isom Grayson and others, Plaintiffs in Error in the above entitled cause, and file the following assignments of error upon which they will rely upon the

prosecution of a Writ of Error in the above entitled cause to the Supreme Court of the United States from the decision and decree made by this Court on the 15th day of November, 1927, which became final on the 28th day of February, 1928, on which date the petition for rehearing was denied:

I

The Supreme Court of the State of Oklahoma erred in reversing the judgment of the District Court of Creek County, Oklahoma, rendered in favor of Isom Grayson and others with instructions to vacate the said judgment and render judgment in favor of James A. Harris and others, confirming their title in and to an undivided one-half interest in the lands in controversy.

II

The Supreme Court of the State of Oklahoma erred in not affirming the judgment of the District Court of Creek County, Oklahoma.

[fol. 96]

III

The Supreme Court of the State of Oklahoma erred in holding that the 7-Year Statute of Limitations, as made and provided by Section 4471, Mansfield's Digest of the Laws of Arkansas, commenced to run against a person purchasing or inheriting property, from the date of said purchase or inheritance and not from the time of the adverse possession by some person claiming an interest therein.

IV

The Supreme Court of the State of Oklahoma erred in holding that if more than seven years after acquiring title, such person or his or her heirs brings an action either in law or equity to recover said lands and the Statute of Limitations is plead as a bar of the right of action, that the burden of proof rests upon the plaintiff to show that he or she commenced their action within seven years from the date of the acquisition of their title by either purchase or inheritance.

V

That the Supreme Court of the State of Oklahoma erred in ignoring and in failing and refusing to follow or give any force and effect to the mandate of the Supreme Court of the United States.

Wherefore, Isom Grayson and others, defendants in error in the Supreme Court of the State of Oklahoma, pray that said decree and decision of said Court be reversed and that said Court be directed to affirm the judgment of the District Court of Creek County, State of Oklahoma, and for all other and proper further relief.

Neff & Neff, Watts & Broadus, Ramey, Flynn, Green & Anderson, Attorneys for Defendants in Error.

[fol. 97] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Mar. 30, 1928

To the Clerk of the Supreme Court of Oklahoma:

You are hereby respectfully requested, in accordance with the Statutes and rules of the Supreme Court of the United States, to make and transmit to said Supreme Court of the United States under your hand and the seal of the Supreme Court of the State of Oklahoma, a true and correct copy of the following portions of the record, to be printed under the direction of the Clerk of the Supreme Court of the United States.

(A) Proceedings in the District Court of Creek County:

1. Petition together with Exhibit "A" and "B."
2. Assignments of Error.
2. Separate answer of William H. and James A. Harris.
3. Separate answer of Quaker Oil & Gas Company.
4. Reply to answer of William H. and James A. Harris.
5. Reply to answer of Quaker Oil & Gas Company.
6. Intervention of Nellie Harris.

7. Petition of Elizabeth Randall, et al.
8. Order making Elizabeth Randall, et al, parties plaintiff.
9. Reply of Nellie Harris to answer of William H. and James A. Harris.
10. Answer of James A. and William H. Harris to intervention of Nellie Harris, et al.
11. Amendment to James A. and William H. Harris' answer.
12. Journal Entry of judgment of District Court of Creek County, Oklahoma.
13. Journal Entry of judgment, findings and decree of District Court of Creek County, Oklahoma.

[fols. 98 & 98½] (B) Proceedings in the Supreme Court of Oklahoma:

1. Petition in Error.
2. Assignments of Error.
3. Order granting rehearing and withdrawing opinion of Miller, J., filed December 19, 1922.
4. Opinion by Branson, C. J., filed November 15, 1927.
5. Petition for rehearing.
6. Order denying petition for rehearing filed February 28, 1928.
7. Judgment.
8. Petition for writ of error.
9. Order allowing writ of error.
10. Writ of error.
11. Citation and service.
12. Bond on writ of error.
13. Assignments of error.
14. Præcipe designating portions of record to be incorporated in transcript.

Neff & Neff, Watts & Broadus, Rainey, Flynn, Green & Anderson.

We, the undersigned, attorneys for James A. Harris, et al, acknowledge service of the foregoing præcipe designat-

ing portions of record to be incorporated in transcript, this 30 day of March, 1928.

Robert F. Blair, Lydick, McPherren & Jordan, Alvin Richards, all by J. D. Lydick, Attorneys for Plaintiffs in Error. Oll Dundem, Atty. of Record for James Brunn. R. E. Jackson, Atty. for Jim Colbert.

[fol. 99] Certificate of Jessie E. Moore, Clerk of Supreme Court of Oklahoma, to foregoing transcript omitted in printing.

[fol. 100] In Supreme Court of the United States

Statement of Points Relied on and Designation of Portions of Record to be Printed—Filed May 4, 1928

In accordance with the rules of this Honorable Court Plaintiffs in Error rely upon the following points for the presentation of their case and for reversal of the judgment of the Supreme Court of Oklahoma.

1. The Seven-year Arkansas Statute of Limitations, Section 4471, Mansfield's Digest of the Laws of Arkansas, applicable to what was formerly the Indian Territory, does not, as was held by the Supreme Court of Oklahoma, commence to run from the date of the acquisition of property by purchase or inheritance but from the date of adverse possession by someone claiming an interest therein. The foregoing Section of Mansfield's Digest has been repeatedly construed by the Supreme Court of the State of Arkansas which holds that a person has seven years from the date of adverse possession to bring either an action at law or suit in equity to recover the land, and the Supeme Court of the State of Oklahoma erred in holding that if a person, after acquiring title, does ont bring some form of action within seven years from the date of acquisition and the Statute of Limitations is plead in bar, that the burden of proof rests upon the plaintiff to show the action was instituted within seven years from the date of the acquisition of title either by purchase or inheritance.

[fol. 101] 2. The Supreme Court of the State of Oklahoma failed to give any force to the mandate of this Court in the former appeal and in effect has nullified its former action in reversing the judgment of the Supreme Court of Oklahoma.

In support of Plaintiffs in Error's foregoing points the following portions of the record called for in the præcipe, directed to the Clerk of the Supreme Court of Oklahoma, are designated for printing under the supervision of the Clerk of this Court:

(A) Proceedings in the District Court of Creek County:

1. Petition together with Exhibits "A" and "B."
2. Separate answer of William H. and James A. Harris.
3. Separate answer of Quaker Oil & Gas Company.
4. Reply to answer of William H. and James A. Harris.
5. Reply to answer of Quaker Oil & Gas Company.
6. Intervention of Nellie Harris.
7. Petition of Elizabeth Randall, et al.
8. Order making Elizabeth Randall, et al, parties plaintiff.
9. Reply of Nellie Harris to answer of William H. and James A. Harris.
10. Answer of James A. and William H. Harris to intervention of Nellie Harris, et al.
11. Amendment to James A. and William H. Harris' answer.
12. Journal Entry of Judgment of District Court of Creek County, Oklahoma.
13. Journal Entry of Judgment, findings and decree of District Court of Creek County, Oklahoma.

(B) Proceedings in the Supreme Court of Oklahoma:

1. Petition in Error.
2. Assignments of Error.
3. Order granting rehearing and withdrawing opinion of Miller, J., filed December 10, 1922.
4. Opinion of Branson, C. J., filed November 15, 1927.
5. Petition for rehearing.
6. Order denying petition for rehearing filed February 28, 1928.

7. Judgment.
8. Petition for writ of error.
9. Order allowing writ of error.
10. Writ of error.
11. Citation and service.
12. Bond on writ of error.
13. Assignments of error.
14. Præcipe designating portions of record to be incorporated in transcript.

Robt. M. Rainey, Streeter B. Flynn, Attorneys for Plaintiffs in Error, Okla. City, Okla.

[fol. 102] The undersigned attorneys for James A. Harris, et al, acknowledge service of the foregoing designation of points to be relied upon by Plaintiffs in Error and of portions of record to be printed, this 2nd day of May, 1928.

Robert F. Blair, Lydick, McPherren & Jordan, per M. E. Jordan, Attorneys for Defendants in Error.

[File endorsement omitted.]

Endorsed on cover: File No. 33,394. Oklahoma Supreme Court. Term No. 116. Isom Grayson, Micey Keys, Paulina Carolina, et al., plaintiffs in error, vs. James A. Harris, William H. Harris, James H. Kennedy, et al. Filed April 27th, 1928. File No. 33,394.

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NO. 116

In the Supreme Court of the United States

October Term, 1928.

ISOM GRAYSON, MICEY KEYS,
PAULINA CAROLINA ET AL.,
Petitioners in Error,

vs.

JAMES A. HARRIS, WILLIAM H. HARRIS,
JAMES H. KENNEDY ET AL.,
Respondents in Error.

PETITION FOR WRIT OF CERTIORARI

Summary of Petition for Writ of Certiorari.

To the Honorable Justices of the Supreme Court of the United States:

Petitioners respectfully pray that this Honorable Court grant a writ of *certiorari* to review a judgment of the Supreme Court of Oklahoma which became final upon the denial of a rehearing February 28, 1928 (R. 66). Appeal allowed March 30, 1928 (R. 68). The opinion of the Supreme Court of Oklahoma challenged herein was first filed December 19, 1922 (R. 57). It was later withdrawn

upon rehearing May 29, 1923 (R. 54), and on the same date another opinion was filed (90 Okla. 147), which was later reviewed by this Court on *certiorari* and reversed (269 U. S. 352). Respondents, after this opinion was spread of record, petitioned and obtained from the Oklahoma Court a rehearing, and on November 15, 1927, that Court re-filed and re-adopted its withdrawn opinion of December 19, 1922 (R. 54), on the one question of limitations, and in a supplemental opinion gave its reasons for so doing (R. 55), 264 Pac. 623, 627 (not yet officially reported).

Petitioners, Creek freedmen, heirs at law of Nancy and Garfield Colbert, filed this ejectment action to recover the two Colbert allotments. Respondents alleged that they had been in adverse possession of the premises in question since 1906 (R. 21). The trial court made findings of fact and rendered judgment in favor of petitioners (R. 35 and 36). The Supreme Court did not disturb the trial court's findings, but reversed its judgment (R. 65).

In its nineteenth finding of fact (R. 40), the trial court found that respondents failed to prove any adverse occupancy prior to the year 1912, which was after Statehood. The Supreme Court in its opinion held that although respondents' adverse occupancy did not commence until after Statehood, the Arkansas Statute of Limitations nevertheless commenced to run against petitioners from the date they acquired title by inheritance before Statehood.

A review by this Court on *certiorari* is proper, since the Arkansas Limitations Statute, Section 4471, Mansfield's Digest of the Laws of Arkansas, pleaded by respondents and construed by the Oklahoma Court, is a Federal Statute having been extended to the Indian Territory by Act of Congress of May 2, 1890, Chapter 182, 26 Statutes at Large 81, 94.

The Oklahoma Court's construction of this Federal Statute—that limitations commenced to run against the owner of land from the date of acquisition of title and not from the date of defendants' adverse occupancy—is in conflict with numerous decisions of the Supreme Court of Arkansas, and with this Court's opinion in *Joines* v. *Patterson*, 274 U. S. 544, which adopted the Arkansas Supreme Court's construction of the Statute.

Petitioners would have presented this petition at an earlier date, but were unable to do so as the printed transcript was not available until a few days ago.

Respectfully submitted,

ROBERT M. RAINEY,
STREETER B. FLYNN,
Attorneys for Petitioners.

Oklahoma City, Oklahoma,
September 24, 1928.

(July 3, 1923), application was made by these petitioners to this Court for a writ of *certiorari*, which was granted, and on the 2nd day of March, 1925, this Court, in an opinion by Mr. Justice Sutherland, reversed the decision of the Supreme Court of Oklahoma. *Grayson et al.* v. *Harris et al.*, 267 U. S. 352.

Respondents, after the mandate of this Court was spread of record, filed a petition for rehearing in the Supreme Court of Oklahoma, which was granted, and on the 15th day of November, 1927, that Court filed an opinion by Mr. Chief Justice Branson (R. 55), in which the Court re-filed and re-adopted *on the one question of limitations* (R. 54) the first opinion of Mr. Justice Miller (R. 57).

Before going into the questions involved in the re-adopted opinion, it is well to note the reasons given by Mr. Chief Justice Branson for the Court's action, which appear to your petitioners as in complete disregard of their rights. The Chief Justice states that there were two principal questions in the case: first, that involving the Statute of Limitations (R. 55), and second, that involving the construction of the proviso to Section 6 of the Creek Supplemental Agreement of June 30, 1902 (30 Stat. at L. 500) (R. 56). The first opinion, that of Mr. Justice Miller, dealt solely with the Statute of Limitations. It was withdrawn after consideration of your petitioners' petition for rehearing, and the *per curiam* opinion dealing with the con-

struction of the proviso to Section 6 of the Supplemental Creek Agreement was substituted (90 Okla. 147). According to the Court's last opinion prepared by Mr. Chief Justice Branson, this was done not because the first opinion prepared by Mr. Justice Miller was incorrect, but because the (R. 56):

> "*Court deemed a construction of said proviso of such interest and public concern as to require an opinion directly on that question. * * * This opinion of this Court on the said proviso served only one useful purpose and that was it furnished an opportunity for the Supreme Court of the United States to determine whether the said proviso extended to second, third, etc., descent without any limitation.* That Court so determined, which rated as a reversal of the opinion of this Court, cited above on that question.
>
> "This brief history of this suit is given in explanation of the reason this case has not been disposed of long since. It is now before this Court on whether or not the original opinion filed herein is final and conclusive on the question there adjudged by that opinion as determining the rights of the parties on the question of the Statute of Limitation.
>
> "This Court has examined the authorities cited by counsel, and feels that the original opinion filed in this Court sets out the law on that *one controlling proposition*, and the said opinion is by this Court re-adopted, and ordered filed as the opinion of the Court herein." (Italics ours.)

In other words, the Supreme Court of Oklahoma says in effect that the withdrawn opinion by Mr. Justice Miller was correct and settled the case, but that since there was another question involved in the case which the Court

deemed of such great importance to the public generally, it would withdraw its correct opinion and file in its place one dealing with a question upon which it desired an opinion of this Court. Such action by the Oklahoma Court compelled these petitioners to prosecute a futile appeal to this Court, since the Supreme Court of Oklahoma apparently always intended, if its action was by this Court reversed, to defeat petitioners by reaching back and re-adopting the Justice Miller opinion concerning the correctness of which it entertained no doubt.

Your petitioners, in appealing to this Court, did so in good faith, believing that the Supreme Court of Oklahoma, when it withdrew the Miller opinion and granted the rehearing, realized that the Miller opinion incorrectly construed the Federal Statute involved. Your petitioners now see that they were mistaken, and that in spite of their appeal and the decision of this Court in their favor, they are back in the same position they were in the year 1922, and that the time and money spent since that date have availed them nothing. Their expenditures, according to the last opinion of the Supreme Court of the State of Oklahoma, served merely the "useful purpose" of having this Court construe the proviso to Section 6 of the Creek Supplemental Treaty which the Oklahoma Court considered of great public concern (R. 56).

Statement.

The opinion of Mr. Justice Miller (R. 57) is said in

the opinion by Mr. Chief Justice Branson (R. 55) to correctly state the law on the question of limitations *"that one controlling proposition"* (R. 57).

The lands in question were the allotments of Nancy Colbert and Garfield Colbert, enrolled Creek freedmen, who died in 1900 (R. 38). Both allotments were made on July 9, 1906 (R. 38). Petitioners claim one-half interest in these lands as the heirs at law of said allottees, and concede that James Brann is the owner of an undivided one-half interest in each allotment (R. 37). The petition in the ejectment action alleges that respondents were in possession and claim some interest in said lands (R. 13). Respondents in their answer pleaded the Arkansas seven-year Statute of Limitations, and alleged that they had been in possession of the premises since the year 1906 (R. 21). Petitioners' reply was a general denial (R. 24). The case was tried in the District Court of Creek County without a jury; findings of fact were made, and judgment rendered in their favor (R. 35 and 36). On appeal, the Supreme Court of Oklahoma reversed the judgment of the District Court of Creek County on the sole question of limitations, 264 Pac. 623, 264 Pac. 627 (not yet officially reported) (R. 55, 57).

The nineteenth finding of fact of the trial court was as follows (R. 40):

> "That the defendants, William Harris and James A. Harris, nor those under whom they claim, took any

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Justices of the Supreme Court of the United States:

Petitioners obtained a writ of error (March 30, 1928, R. 68) in the instant case to review a judgment of the Supreme Court of Oklahoma, in which a rehearing was denied February 28, 1928 (R. 66), since they were uncertain as to the meaning and effect of the following proviso of Section 2 of the Act of January 31, 1928:

> "Provided, however, that the review of judgments of State Courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such Courts."

If said Act is not exclusive as to the method of reviewing judgments of State Courts, we believe a review of this case by *certiorari* to be proper, and this Court is authorized under Paragraph C, Section 237, as amended by Act of Congress of February 13, 1925, Chapter 229, 43 Stat. at L. 936, to consider the papers whereon the writ of error was allowed as a petition for *certiorari*. In order to aid the Court in its consideration of the papers, we are presenting this petition.

History of Case.

This is the second time that your petitioners have been compelled to apply to this Court for a writ of *certiorari* in this case. The case was filed originally in this Court on October 1, 1923, No. 187, October Term 1924, and

this Court granted a writ of *certiorari* directed to the Supreme Court of the State of Oklahoma and later reversed the action of that Court. 267 U. S. 352.

Your petitioners, freedman citizens of the Creek Nation, on the 14th day of August, 1917, filed an action in ejectment in the District Court of Creek County, Oklahoma, against respondents for the purpose of recovering a one-half interest in the lands in controversy which had been allotted to Nancy Colbert and Garfield Colbert (R. 1). An accounting for a one-half interest in the oil and gas taken from the premises was also prayed. The District Court of Creek County made findings of fact (R. 36), and rendered judgment in favor of your petitioners (R. 35). Respondents thereafter prosecuted an appeal to the Supreme Court of Oklahoma, which, on the 19th day of December, 1922, in an opinion written by Mr. Justice Miller, 264 Pac. 623, 627 (R. 57) (not officially reported), reversed the action of the District Court and directed that judgment be rendered in favor of respondents. A petition for rehearing was filed and the opinion in question was withdrawn (R. 54). Thereafter on the 29th day of May, 1923, the Supreme Court of Oklahoma filed another opinion, 90 Okla. 147, and again the judgment of the District Court was reversed with instructions to enter judgment quieting title in respondents.

After the denial of a rehearing on the second opinion

possession whatever of said land until some time in 1912, after the decision of the Federal Court in the case of *Brann* v. *Bell*. * * * That the evidence fails to show an open continuous and hostile possession in the defendants James A. Harris, William H. Harris, James H. Kennedy, the Quaker Oil & Gas Company, and the Ohio Cities Oil & Gas Company, or any of them or their predecessors in title prior to November 17, 1907."

The Supreme Court of Oklahoma did not disturb this finding, but held the trial court had incorrectly construed and applied a Federal law. It will be noted from the finding that respondents undertook the burden of establishing adverse possession before Statehood (when the Arkansas limitations statute governed), but failed. Proving any adverse possession after Statehood would be ineffective as far as they were concerned, since the longer Oklahoma limitations statute of fifteen years had not run at the time this suit was filed.

In order to reverse and render judgment, the Oklahoma Supreme Court held the Arkansas seven-year statute applied, and construed it as beginning to run against petitioners from the date they *acquired title*, even though neither respondents nor any one through whom they claimed were in *adverse possession* at any time *before Statehood* (R. 40, finding No. 19).

The Federal Question.

The Arkansas Statute of Limitations held to govern is Section 4471, Mansfield's Digest of the Laws of Arkansas.

It is clear, therefore, that the correctness of the Oklahoma Court's decision turns upon a proper construction of *Federal law*, since Section 4471, Mansfield's Digest, was by Congress extended over the Indian Territory (Section 31, Act of May 2, 1890; Chapter 182; 26 Stat. at L. 81, 94), and when so extended "carried the settled constructions placed upon them by the Courts of that State. So construed, they became in effect laws of the United States as though originally enacted by Congress for government of the Territory." (*Joines* v. *Patterson*, 274 U. S. 544, 549), wherein was cited *Willis* v. *Eastern Trust & Bnkg. Co.*, 169 U. S. 295, 307; *James* v. *Appel*, 192 U. S. 129, 135; *Gidney* v. *Chappel*, 241 U. S. 99, 102; *Byrd* v. *State*, 99 Okla. 165.

Section 4471, Mansfield's Digest of the Laws of Arkansas, is as follows:

> "No person or persons, or their heirs, shall have, sue, or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fall or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements, hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed." • • •

Supreme Court of Oklahoma's Construction of Federal Law.

The Supreme Court of Oklahoma held that the statutory seven-year limitations, a Federal law, began to run from the date title was acquired either by purchase or de-

scent, even though no one was in adverse possession or claimed title thereby, and that the only exceptions to the rule were minors, a *femme covert*, and persons *non compos mentis*, who, if they pleaded and proved their disabilities, would have three years after their disabilities were removed to institute suit.

This position is so startling we will quote from the opinion itself (264 Pac. 623, 625, 626):

> "Neither Gertrude Grayson, nor her heirs, shall have, sue or maintain any action or suit either in law or equity for the recovery of any lands, tenements or hereditaments, but within seven years next *after her title accrued*. That is the title of Gertrude Grayson R. 62) * * *. But when a person acquires title to real estate either by purchase or inheritance, their *'title'* has accrued simultaneously with acquiring it within the meaning of said Section 4471, *supra*. If more than seven years after acquiring title, such person or his or her heirs, bring an action either in law or equity to recover said lands, and the statute of limitations is pleaded as a bar of the right of action, the burden of proof rests upon the plaintiff to show facts that take it out of the bar of the statute of limitaions." (Italics ours) (R. 62, 63).

This conclusion was reached by ignoring the numerous Arkansas decisions interpreting the statute in ejectment cases, and this Court's opinion in *Jones* v. *Patterson*, 274 U. S. 544, 553.

Discussion of Supreme Court of Oklahoma's Opinion

Since Section 4471, Mansfield's Digest, when extended over the Indian Territory, carried the settled construction

terson, 274 U. S. 544, 549), we will refer to some of the Arkansas decisions dealing with the statute of limitations in ejectment cases similar to that now before the Court:

—*Shirley et al.* v. *Cumberhouse*, 41 Ark. 97, 98.

Nicklase v. *Dickerson*, 65 Ark. 422, 46 S. W. 945.

Foster v. *Elledge*, 106 Ark. 342, 153 S. W. 819.

Love v. *Couger*, 130 Ark. 445, 197 S. W. 853.

McConnell v. *Day*, 61 Ark. 464, 33 S. W. 731.

Maney v. *Denison*, 110 Ark. 571, 163 S. W. 783.

Newman v. *Peay*, 117 Ark. 579, 176 S. W. 143.

Ringo, Executor, v. *Woodruff*, 43 Ark. 469, 486.

Mooney et al. v. *Cooledge*, 30 Ark. 640.

Calhoun v. *Moore et al.*, 79 Ark. 109, 94 S. W. 931.

St. L., I. N. & S. R. Co. v. *Berry*, 80 Ark. 309, 110 S. W. 1049.

This Court, in *Joines* v. *Patterson*, 274 U. S. 544, 553, adopted the decisions of the Supreme Court of Arkansas, specifically holding that the seven-year statute of limitations began to run from the taking of adverse possession:

> "*Under the settled construction given to the seven-year statute of limitations by the Courts of Arkansas, it began to run against Patterson when Joines took possession.*" (Italics ours.)

This Court's opinion (*Joines* v. *Patterson*) definitely settling the question of Federal law involved herein had been rendered before the Supreme Court of Oklahoma readopted and re-filed the Justice Miller opinion, and that

Court's attention was repeatedly directed to it (see petition for rehearing, part of this record, but not printed) (R. 65).

The correct construction and application of the Arkansas Limitations Statute is of the utmost importance, since the opinion challenged may affect the title of every piece of land alienable before Statehood in that vast area which was formerly Indian Territory. Heretofore everyone has acted upon the belief that if there was no adverse possession prior to Statehood, the Arkansas Statute of Limitations had no application.

The Supreme Court of Oklahoma cited the cases of *McNeil* v. *Garland & Nash*, 27 Ark. 343, and *Schrimpscher* v. *Stockton et al.*, 183 U. S. 290, as sustaining its position that the statute ran from acquisition of title and that the burden of proof when the statute was pleaded by defendants, rested on the plaintiffs. Such is not and never was the law in Arkansas in ejectment actions, and we have herein cited numerous cases to the contrary, in one of which (*Nicklase* v. *Dickerson*, 65 Ark. 97, 20 S. W. 813), it was said:

> "In order to constitute title by adverse possession it must be shown that the possession was actual, hostile, open and exclusive and continued without break for the full period prescribed by the statute. The burden to show this is upon the party claiming title by adverse possession. *Ringo* v. *Woodruff*, 43 Ark. 486."

In the Arkansas case cited in the opinion, attorneys'

fees were involved. The plaintiff, of course, in his petition in such a case must set forth when the services were rendered, and naturally if service of process was not had within the period of limitations, judgment would be rendered for defendant. In ejectment cases the plaintiff sets up his title and has the burden of proving it when it is denied. If the defendant relies on the statute of limitations, he has the burden of proving adverse occupancy for the statutory period. *Maney* v. *Dennison et al.*, 110 Ark. 571, 163 S. W. 783. Plaintiff does not lose his property if he fails to show he did not file some kind of suit against someone within seven years after he acquired title. Were this absurdity the law, a person could wait until seven years after the owner acquired title, and if no suit had been filed, move on the land and acquire title by one day's possession.

Schrimpscher et al. v. *Stockton et al.*, 183 U. S. 290, is even quoted from at length as sustaining this position. As we read this opinion, it holds exactly contrary to the views expressed in the Oklahoma Court's opinion. It is clearly stated therein that defendants in error were holding the premises adversely at the time the Indian received an alienable title, and that he was therefore bound to institute ejectment proceedings within the limitations period. In the instant case, respondents did not hold possession adversely at the time title of petitioners was acquired, and the trial court so found (R. 40).

Your petitioners respectfully pray that this Court grant its writ of *certiorari* in order that the Supreme Court of Oklahoma's palpably erroneous construction of Federal law may be corrected.

Respectfully submitted,

ROBERT M. RAINEY,
STREETER B. FLYNN,
Attorneys for Petitioners.

Oklahoma City, Oklahoma,
September 24, 1928.

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N THE SUPREME COURT OF THE UNITED STATES.

October Term, 1927.

No. 942

ISOM GRAYSON, *ET AL., Plaintiffs in Error,*

vs.

JAMES A. HARRIS, *ET AL., Defendants in Error.*

MOTION BY DEFENDANTS IN ERROR TO DISMISS.

And now come defendants in error in the above entitled cause by their counsel, Robert F. Blair, and represent to the court:

(1) That the writ of error or appeal has been improvidently allowed; this case may not be brought to this court by appeal or writ of error but only by petition for *certiorari.*

(2) That there is no federal question in this case, or any question of importance to the public, but only the question of limitation, which is local and non-federal.

(3) That if this case is rightfully here, which is not admitted but denied, the decision of the question of limita-

tion by the Supreme Court of Oklahoma is in harmony with the decisions of that court and this court, and was and is substantially and legally correct and right.

Wherefore defendants in error move the court to dismiss the writ of error and appeal.

ROBERT F. BLAIR,
Counsel for Defendants in Error.

BRIEF.

First Point.

In *Longest* v. *Langford*, 274 U. S. 499, this court said, "This case does not involve any constitutional question, but only a question of the construction and application of congressional enactments concededly valid. It therefore falls within the class where a review in this court may be had only on petition for *certiorari*."

That declaration is applicable, for this case never could have been brought here on writ of error but only by *certiorari*, and the Act of January 31, 1928, made no change in that method of appeal from state courts.

Second Point.

We direct the attention of the court to what this court said about this identical question when this case was here before:

> "Nor need we inquire into the defense of the statute of limitations. The decision now under review entirely ignores it. The rule that when the decision of a state court may rest upon a non-federal ground adequate to support it, this court will not take jurisdiction to determine the federal question, has no application where, as here, the non-federal ground might have been considered by the state court but was not."
>
> —*Grayson* v. *Harris*, 267 U. S. 352.

If limitation was non-federal then, it is non-federal now.

Third Point.

The decision of the question of limitation by the Supreme Court of Oklahoma in this case is in harmony with former decisions of the question of that court, and also in harmony with the decisions of this court. The only ground for controversy is to misunderstand the facts and the condition of the pleadings. Applied to the facts, this principle is an elementary proposition.

The petition filed in the trial court by plaintiffs in error on August 4, 1917, for the recovery of this property, which they claimed to have inherited from Gertrude Grayson on her death in April, 1907, showed on its face that their action was barred by the seven-year statute of limitation in force then, and controlling. Defendants in error pleaded that statute which is section 4471 of Mansfield's Digest of the Statutes of Arkansas, as follows:

> "No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall come, fallen or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed. *Provided*, that if any person or persons that are or shall be entitled to commence and prosecute such suit or action in law or equity be or shall be at the time said right or title first accrued, come or fallen within the age of twenty-one years, *femme covert* or *non compos mentis*, that such

person or persons, his, her, or their heirs, shall and may, notwithstanding said seven years may have expired, bring his or her suit or action, so as such infant, *femme covert* or *non compos mentis*, his, her or their heirs, shall bring the same within three years next after full age, discoverture or coming of sound mind. *Provided*, also, that no cumulative disability shall prevent the bar hereby formed and constituted by the saving of this section."

It then became the duty of counsel for plaintiffs in error, in their reply, or by amended petition, to specially plead and state facts to toll the statute or bring their case within one of its exceptions, namely, minority, coverture, or incompetency, and this they wholly failed to do. Their reply in legal effect was merely a general denied (R. ..) which is not sufficient. The motion of defendants in error for judgment on the pleadings should have been sustained, but was erroneously denied. Upon this condition of the record the Supreme Court of Oklahoma held:

> "If more than seven years after acquiring title such person or his or her heirs, bring an action either in law or equity to recover said lands, and the statute of limitation is plead as a bar of the right of action, the burden of proof rests upon the plaintiffs to show facts that take it out of the bar of the statute."

This has been, and is the law of this case. It is not necessary but we nevertheless direct the attention of the court to the following authorities:

In *Miller* v. *McIntyre*, 6 Pet. 61, it was held that where defendant relies on the statute of limitation and plaintiff desires to bring himself within its savings, "it would be

proper for him, in his replication or by amendment to his bill, *to set forth the facts specially.*"

In *Marsteller* v. *McClean*, 7 Cranch. 156, this court held:

> "It is certainly a rule of pleading that a replication should of itself contain a full and complete answer to the bar, and that a joint plea which is bad, affects with its consequences all the parties joining in it."

See, also:

Taylor v. *Bonham*, 5 How. 233;
Gross v. *Disney*, 95 Tenn. 592, 32 S. W. 632;
Arnold v. *Limberger*, (Ga.) 49 S. E. 812;
Rowe v. *McIntosh*, 101 Okl. 299;
Harris v. *Grayson*, 90 Okl. 147;
Foreman v. *Marks*, 87 Okl. 205;
Maine v. *Edmonds*, 58 Okl. 645;
Patterson v. *Rousney*, 58 Okl. 185.

It is in harmony with the decisions of the Supreme Court of Arkansas whence the statute came.

In *Ouachita County* v. *Tufts*, 43 Ark. 139, it was held that when the statute of limitation is pleaded by defendant, the burden is on plaintiff to plead by replication and prove "both a cause of action and the commencement of legal proceedings within the period mentioned in the statute." The court cited *Taylor* v. *Spears*, 6 Ark. 382, and *McNeil* v. *Garland*, 27 Ark. 343.

The authorities hold that after defendants in error had pleaded the statute of seven years' limitation in answer to their petition for the recovery of this land filed ten years after their title and cause of action had accrued to them as

claimed by them in said petition, they are barred unless they plead and prove some disability in plaintiffs in error which would toll the statute and excuse them from bringing their suit within the seven-year period of limitation.

The decision here turns on the condition of the pleadings, which are shown in the appendix to this motion, and not on the question of adverse possession. That question is not raised in their pleadings, and therefore this case is not ruled by *Joines* v. *Patterson*, 274 U. S. 544.

Respectfully submitted,

ROBERT F. BLAIR,
Counsel for Defendants in Error.

APPENDIX TO MOTION OF DEFENDANTS IN ERROR TO DISMISS.

Extracts From the Transcript of Record.

The original petition of plaintiffs in error, filed in the District Court of Creek County, Oklahoma, August 4, 1917:

PETITION.

FIRST.

The plaintiffs state that they and each of them, are citizens of the Creek Nation and members of the Creek Tribe of Indians; that they are the owners in fee, each, of an undivided interest and portion of the lands hereinafter described, in the proportions hereinafter set forth, and that they derived their title thereto as hereinafter stated, to-wit:

The plaintiffs state that Nancy Colbert, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5641; that Louisa Colbert deceased, was a Creek Freedman, a citizen of the Creek Nation and duly enrolled as such on the Approved Creek Freedman roll under No. 5639; that Garfield Colbert deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5640; that Gertrude Grayson, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such, on the Approved Creek Freedman roll under No. 5684; that Jim Colbert is a Creek Freedman, a citizen of the Creek Nation and duly enrolled as such on said roll under No. 2645.

The plaintiffs further state that the said Nancy Colbert, died intestate, without issue and never having

been married, about March 1st, 1900, leaving her surviving, Jim Colbert, her father, and the said Louisa Colbert, since deceased, her mother; that the said Louisa Colbert died intestate about March 7th, 1900, leaving her surviving Jim Colbert, her husband, Garfield Colbert, since deceased, her son, and the said Gertrude Grayson, since deceased, her daughter, and no other descendants.

That the said Garfield Colbert died intestate, without issue and never having been married, in the month of June, 1900, leaving him surviving Jim Colbert, his father, and the said Gertrude Grayson, since deceased, his half-sister, and no other brothers or sisters nor children of deceased brothers and sisters.

The plaintiffs further state that on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Nancy Colbert to her Creek heirs, as the proportional share of the lands of the Creek Nation to which she would have been entitled if living, the following described lands, to-wit:

Lot Two, and the Northeast Quarter of the Northeast Quarter, and the Northwest Quarter of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section Thirty-one in Township Seventeen North, of Range Twelve East, and the Northwest Quarter of the Southwest Quarter of Section Seventeen, and the East Half of the Southeast Quarter of the Southeast Quarter, and the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the East Half of the Southwest Quarter of Southeast Quarter of the Southeast Quarter, and the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section Twenty, all in Township Eighteen North, of Range Twelve East, and all in Creek County, Oklahoma. A copy of

the certificate of which allotment is hereto attached marked "Exhibit A" and made a part hereof.

That on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Garfield Colbert, to his Creek heirs, as the proportional share of the lands of the Creek Nation to which he would have been entitled if living the following described lands, to-wit:

The Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen North, of Range Twelve East, in Creek County, Okla. A copy of the certificate of which allotment is hereto attached, marked "Exhibit B," and made a part hereof.

The plaintiffs further state that upon the allotment of the above described lands the said Gertrude Grayson, since deceased, and Jim Colbert, as the only surviving Creek heirs at law of the said Nancy Colbert and Garfield Colbert, became the owners in fee, each, of an undivided one-half of said allotments of lands, and became vested of the full legal and equitable title thereto as tenants in common.

The plaintiffs further state that the said Gertrude Grayson, deceased, was the illegitimate daughter of the said Louisa Colbert, deceased, her putative father being John Foster, a non-citizen of the Creek Nation and not a Creek descendant. That George Tobler, deceased, was the father of the said Louisa Colbert, deceased, and that Cloria Grayson, also known as Cloria Ross, is the mother of said Louisa Colbert; that the said George Tobler was a Creek Freedman and a citizen of the Creek Nation; that the said Cloria Grayson is a non-citizen of the Creek Nation and is not a Creek descendant.

The plaintiff further states that the said George Tobler died about the year 1890, leaving him surviving his daughter Louisa Colbert, and his wife Cloria Grayson herein before mentioned, and no other descandants nor father or mother. That the said George Tobler had the following brothers and sisters, namely: Micy Keys Bucher Grayson, Friday Tobler, Easy Rowe, Phoebe Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham. Jim Boy Tobler and Dinah Grayson all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys, that all of the said deceased brothers and sisters of the said George Tobler left surviving them Creek descendants who are hereinafter named and are all related to them and to the said George Tobler as hereinafter set forth.

The plaintiffs further state that the said Gertrude Grayson died, intestate, without issue and never having been married on the .. day of April, 1907, in which is now Mayes County, Okla., possessed in fee of an undivided one-half of the lands hereinbefore described and leaving her surviving as her only Creek heirs at law, the said Micy Keys and the persons hereinafter named as the surviving descendants of the above named deceased brothers and sisters of the said George Tobler, deceased, and that upon the death of the said Gertrude Grayson as her Creek heir at law, the said Micy Keys and the surviving descendants hereinafter named of the brothers and sisters of the said George Tobler, deceased, became the owners in fee of the lands by her possessed as hereinbefore set forth.

The plaintiffs further state that the undivided one-half of the land above described of which the said Gertrude Grayson died possessed as hereinbefore set forth upon her death became vested in fee in the surviving

Creek heirs of the said Gertrude Grayson in the proportions and parts hereinafter set forth.

* * * * * * *

The plaintiffs further state that they are entitled to the immediate possession of the land herein described as tenants in common with each other, and the defendants herein; that the defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dickson Q. Brown, are in possession of said lands claiming to be the owners thereof to the exclusion of the plaintiffs, in and to said lands and every part thereof; that the possession of said defendants of the said lands to the exclusion of the plaintiffs is wrongful and unlawful and that they, the said defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann, and Dickson Q. Brown, wrongfully and unlawfully keep the plaintiffs, each and all of them, out of the possession of said lands and every part thereof.

* * * * * * *

Wherefore, the plaintiffs pray judgment against the defendants for restitution and possession of their undivided portions and interests in said lands as set forth and alleged herein, the plaintiffs further pray an order of this court requiring the defendants to answer and set forth the nature and extent of their respective title and interest in the lands herein described.

* * * * * * *

SEPARATE ANSWER OF DEFENDANTS, WILLIAM H. HARRIS AND JAMES A. HARRIS.

And now come defendants, William H. Harris and James A. Harris, and for their answer to plaintiffs' petition filed herein, deny each and every allegation therein contained and say the same are not true in manner and form as therein alleged and set forth.

* * * * * * *

And for their further answer to plaintiff's petition these defendants aver that they and those under whom they claim, and their co-tenants, have been in open, notorious, adverse, uninterrupted and exclusive possession of all of said lands, using and occupying same from the year 1906 until the present time, having excluded plaintiffs and all of them therefrom, and having denied them all right to said property or any part thereof for more than ten years next before the bringing of said action by plaintiffs, and therefore these defendants plead the statute of ten years' limitation and the statute of seven-year limitation, and the statute of five-year limitation, and say that plaintiffs' cause of action, if any they ever had, has been and is forever barred.

* * * * * * *

Wherefore, these defendants pray that plaintiffs take nothing by their suit and that judgment be entered herein quieting the title of said property in defendants, and that plaintiffs and all of them be enjoined from ever hereafter setting up any right, title or claim to said property or any part thereof, or from interfering with these defendants in the peaceable possession and enjoyment thereof. Defendants further pray for all costs and general relief.

Robert F. Blair,
George S. Ramey,
Attorneys for Defendants.

REPLY.

Come now the plaintiffs in the above entitled action and for reply to the answer of the defendants, William H. Harris and James A. Harris, filed herein, deny each and every allegation of new matter therein contained, except such as are herein specifically admitted.

For further reply the plaintiffs state that neither Cloria Grayson nor Armstead Foster have and never had any right, title or interest in and to the lands in controversy herein, and that the deeds of conveyance by them made, described in defendants' answer and under which the defendants claim title to said land, are each and all of them void for that the said Cloria Grayson and Armstead Foster had no right, title or interest in said land and have never acquired any interest or title therein. That the deeds from L. A. Bell and H. Anna Bell, his wife, to the defendants, William H. Harris and James A. Harris, described in defendants' answer and under which they claim title through the said L. A. Bell are void for that the said L. A. Bell and H. Anna Bell had and never have had any right, title or interest in and to said land.

The plaintiffs further state that the deed described in defendants' answer as having been dated January 2nd, 1908, and made and executed by Micy Keys, *nee* Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson is not the deed of the said Micy Keys and Jim Tobler, nor either of them.

The plaintiffs further state that the tax deed mentioned in defendants' answer, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson is based upon a purported sale of the land described in said deed for taxes assessed and levied against said land for the year 1913.

That the said tax deed is void for that it was made and issued without authority of law, without right and contrary to law, in this that the land described in said deed was not listed and assessed for taxation for the year 1913 as prescribed and directed by law and that said assessment was erroneous and illegal, and for that the county treasurer failed and neglected to give notice as required by law for the amount of taxes assessed and levied against said land for the year 1913, and when the same became due and delinquent; and for that the taxes for the year 1913 levied and assessed against said land had not become delinquent at the time of the purported sale thereof for said taxes and that said land was not subject to sale for delinquent taxes at the time said sale was held and purported to be made, and that said sale was in all things illegal and void; and for that the sale of said land for taxes of 1913 was not made as required by law; and for that the return of said sale was not made to the county clerk and that a record thereof was not kept as required by law.

The plaintiff further states that the deed described and mentioned in defendants' answer from Ira J. Anderson, dated 1917, to the defendants and others is void for that the said Ira J. Anderson had and never has had any right, title or interest in and to said lands.

The plaintiff hereby offer to pay to the defendants all taxes, penalties, interests and costs which they would be bound to pay if they were redeeming the land herein described from the purported tax sale, and hereby offer to pay to the defendants such other and further sum as the court may find just and equitable to reimburse the defendants for all moneys paid out and expended by them for or on account of taxes, penalties, costs and interest thereon assessed and levied against said land.

Wherefore, in addition to the prayer of their petition, the plaintiffs pray that the deeds described and mentioned in the answer of the defendants be declared void, that they be canceled, set aside and held for naught.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1927.

No. 942

ISOM GRAYSON, *ET AL., Plaintiffs in Error,*

vs.

JAMES A. HARRIS, *ET AL., Defendants in Error.*

NOTICE OF MOTION TO DISMISS.

Hon. Robert M. Rainey, counsel for plaintiffs in error, will take notice that on October 1, 1928, the motion of defendants in error to dismiss the writ of error and appeal, in the above entitled cause will be submitted to the Supreme Court of the United States. A printed copy thereof with brief and appendix is herewith served on you, this .... day of September, 1928.

....

Counsel for Defendants in Error.

Service accepted this .... day of September, 1928.

.....,

Counsel for Plaintiffs in Error.

(8)

SUPREME COURT OF THE UNITED STATES.

No. 116.—October Term, 1928.

Isom Grayson, Micey Keys, Paulina Carolina et al., Petitioners, vs. James A. Harris, William H. Harris, James H. Kennedy et al.	On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

[April 8, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

This case was before us at an earlier stage in *Grayson* v. *Harris*, 267 U. S. 352.

In August, 1917, the petitioners brought an action against the respondents in the district court of Creek County, Oklahoma, to recover an undivided half interest in certain lands in that county lying within the former Creek Nation in the Indian Territory. These lands had been allotted on July 9, 1906, in the names of two freedmen, Creek citizens, who had previously died; and the title to an undivided half interest in the lands had thereupon passed to Gertrude Grayson, a Creek citizen, who was an heir of each of the allottees. She died, intestate, and without issue, in April, 1907, leaving as her next of kin certain remote kindred who were Creeks, and a maternal grandmother who was not a Creek. On November 16, 1907, Oklahoma was admitted as a State.[1]

The plaintiffs alleged that upon the death of Gertrude Grayson the undivided half interest in the lands of which she had died possessed vested in fee in them as her surviving Creek heirs; and that when the suit was brought they were entitled to the possession thereof but were being kept out of possession by the defendants who were then in possession under some claim of ownership. The defendants, answering, denied the plaintiffs' title and alleged that the title to Gertrude Grayson's half interest had upon her death de-

[1]President's Proclamation, 35 Stat. 2160; Oklahoma v. Texas, 272 U. S. 21, 26; Joines v. Patterson, 274 U. S. 544, 549.

scended to her grandmother, from whom the defendants derived title by mesne conveyances; that they and those through whom they claimed had been in adverse possession of the lands from the year 1906; and that the plaintiffs' cause of action was barred by the statute of limitations of seven years. The plaintiffs, replying, denied these allegations.

The case was tried by the court without a jury, which was waived. The court held that upon the death of Gertrude Grayson her undivided half interest had descended to her surviving Creek kindred under § 6 of the Supplemental Creek Agreement, ratified and confirmed by the Act of June 30, 1902, c. 1323,[1] found that the evidence failed to show an adverse possession in the defendants and their predecessors prior to November 17, 1907, and that neither the defendants nor those under whom they claimed "took any possession whatever of said land until some time in 1912", and adjudged that,—with certain exceptions not here material,—the plaintiffs were the owners of the undivided half interest in suit.

On an appeal the Supreme Court of Oklahoma filed in 1922 an opinion to the effect that the plaintiffs' action was barred by the statute of limitations, but later, on a petition for rehearing, in 1923 withdrew the original opinion and substituted another opinion holding, without reference to the statute of limitations, that under the Supplemental Creek Agreement the undivided half interest of Gertrude Grayson had been inherited by her maternal grandmother; and accordingly reversed the judgment of the trial court, with instructions to enter judgment quieting the title of the defendants. 90 Okla. 147.

On a writ of certiorari this Court, holding that under the Supplemental Creek Agreement the undivided half interest of Gertrude Grayson had been inherited by her Creek kindred and not by her grandmother, without passing on the question of the statute of limitations, which as we stated was not then open to our consideration, reversed the judgment of the Supreme Court of Oklahoma, and remanded the cause for further proceedings not inconsistent with our opinion. *Grayson* v *Harris*, 267 U. S. 352.

Thereafter the Supreme Court of Oklahoma readopted the withdrawn opinion of 1922 on the question of the statute of limitations, and ordered it filed as the opinion of the court. 129 Okla. 285;

[1] 32 Stat. 500, 501.

and holding, as therein set out that the plaintiffs' action was barred under § 4471 of Mansfield's Digest of the Statutes of Arkansas—which, as a part of Chapter 97 relating to limitations, had been extended over and put in force in the Indian Territory by § 31 of the Act of May 2, 1890, c. 182[2]—again entered judgment reversing the judgment of the trial court and remanding the cause with instructions to confirm the defendants' title. 129 Okla. 281. And this final judgment has been brought here for review under a second writ of certiorari. — U. S. —.

Sec. 4471 of Mansfield's Digest, when extended over the Indian Territory by the Act of Congress became, in effect, with the settled construction placed upon it by the Arkansas courts, a law of the United States as though originally enacted by Congress. *Joines* v. *Patterson*, 274 U. S. 544, 549. Therefore its construction and effect present federal questions that are to be determined by this Court in the exercise of its own independent judgment.

This section provides—subject to a saving clause in favor of minors, married women and persons *non compos mentis*—that: "No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed."

The Supreme Court of Oklahoma—without referring to the finding of the trial court that the defendants and those through whom they claimed had not taken any possession of the land until some time in 1912—held that, although § 4471 provided that a suit for the recovery of land should be brought within seven years "after title or cause of action accrued," it might be read by leaving out the words "or cause of action," that is, as if it provided that the suit should be brought within seven years after the title accrued; that the title of Gertrude Grayson accrued on July 9, 1906, when she acquired her title by inheritance; that the statute then commenced to run, and, as this was before Oklahoma was admitted as a State, remained the controlling statute; that under its provisions,

[2] 26 Stat. 81, 94.

neither Gertrude Grayson nor her heirs could sue or maintain any action for the recovery of the lands except within seven years after her title so accrued, that is, within seven years after July 9, 1906; and that, as the suit was not brought until August, 1917, eleven years thereafter, and the plaintiffs had not pleaded or proven any disabilities or other facts which relieved them from the operation of the statute, their action was barred.

The construction thus placed upon § 4471 and the effect given to it as applied to the facts in this case, are in our judgment erroneous. The first clause requires a suit for land to be brought within seven years after the "right to commence, have or maintain such suit shall have come, fallen or accrued." Under the entire section it is clear that the statute does not begin to run until the plaintiff's cause of action accrues, even although his title had been previously acquired. While under some circumstances there may be a cause of action when the title is acquired, as where the land is then adversely held—obviously the mere acquisition of title cannot of itself give the owner of land a cause of action against persons who have not asserted an adverse claim under circumstances constituting an invasion of his justiciable rights. A different construction of the statute would lead to the anomalous result that an owner of land whose title appeared to be unquestioned would be prevented from recovering it if he did not bring suit within seven years after he acquired title against persons who during such seven years had neither asserted any claim to the land nor held adverse possession of it nor otherwise invaded his rights; that is, that his suit would be barred before any cause of action had accrued on which he could have brought suit. This, manifestly, was not intended.

Here it does not appear that the defendants or their predecessors had asserted any claim to the undivided one-half interest before taking possession of it in 1912. Upon the facts found by the trial court—which were not questioned by the Supreme Court—the plaintiffs' cause of action against the defendants did not accrue until that time. And as the suit was brought within less than seven years thereafter it was not barred by the statute of limitations.

We find no decision of the Supreme Court of Arkansas that gives to § 4471 the construction placed upon it by the Oklahoma

court. And, on the contrary, it was said by this Court in *Joines* v. *Patterson, supra,* at p. 533, that: "Under the settled construction given to the seven-year statute of limitations by the courts of Arkansas, it began to run against (the plaintiff) when (the defendant) took possession." And see *Shearman* v. *Irvine's Lessee,* 4 Cranch 367, 369, involving the construction of a similar Georgia statute.

In view of our conclusion as to the construction and effect of § 4471, the controlling federal question remaining in the case, it is unnecessary to deal in detail with other contentions urged in behalf of the defendants, which, in so far as they may bear upon the federal question, are insufficient to sustain the judgment.

The judgment will be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.